

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 11,759

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

THEO. T. TAYLOR, *Appellant*

v.

PROVIDENCE HOSPITAL, A Body Corporate, and
DR. ANGEL E. SALAZAR, *Appellees*.

Appeal from the United States District Court
for the District of Columbia Circuit

*United States Court of Appeals
For the
District of Columbia Circuit*
FILED NOV 16 1953

Joseph W. Stewart
CLERK

EARL H. DAVIS, ESQ.,
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STATEMENT OF QUESTION PRESENTED

Where an adult male is carried, in an unconscious condition, to the emergency room of a local hospital at 2:15 A.M. (when its X-Ray department is closed), with a badly lacerated skull in the occipital region, sustained as the result of a fall on a sidewalk, and an interne at such hospital undertakes to treat the said patient by cleansing and suturing such laceration, inserting some four sutures therein, during all of which treatment and observation, consuming approximately two hours, the patient remains on the operating table suffering with a concussion of the brain, is the said interne and the hospital for which he acted as agent, guilty of negligence in failing to admit the said patient for hospitalization, immediate sedation and rest, and further observation to be had after X-Ray to rule out any question of fracture of the skull or inter-cranial damage, but instead turn him over to police whom the hospital, through its agent, had called before any examination of the patient was made, and the police remove such patient from the hospital on a charge of intoxication which is later nolle-prossed when it developed that the patient, on admittance to another hospital the same day (where he remained for approximately one month), was in fact suffering from a linear fracture of the skull? And is not the trial court guilty of reversible error in directing a verdict for the defendants at the close of plaintiff's evidence, when it is shown that such erroneous diagnosis of intoxication is made without the taking of any blood, or urine test to confirm same, or the taking of any X-Ray to rule out the possibility of skull fracture?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,759

THEO. T. TAYLOR, *Appellant*,

v.

PROVIDENCE HOSPITAL, A Body Corporate, and
DR. ANGEL E. SALAZAR, *Appellees*.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal by Theo. T. Taylor, unsuccessful plaintiff below, from the action of the United States District Court for the District of Columbia in directing a verdict for the defendants at the close of plaintiff's evidence in an action for damages for professional negligence, malpractice, wilfull and malicious treatment, unlawful detention and false imprisonment. (App. 140A)

The United States District Court had jurisdiction of the original action under and by virtue of Title 11, Section 306, D.C. Code of Laws, 1951 Edition, as amended.

This Court has jurisdiction to review the judgment appealed from (which was a final judgment in the court below), under and by virtue of revised Title 28, Section 1291 and 1292, of the United States Code.

The pleading showing evidence of the jurisdiction is the Complaint. (App. 2A). For the purpose of this brief, the parties will be referred to as in the court below.

STATEMENT OF THE CASE

In 1949, the plaintiff, a 42 year old married white man, was and had been for a number of years, a licensed sight-seeing guide in the District of Columbia, and as such owned and operated two sight-seeing vehicles in connection with his business.

About 2:00 A.M. on the morning of May 24, 1949, after leaving a restaurant near Second and B Streets, S.E., with a party of friends, he attempted to separate two acquaintances who were having an altercation, and while acting as such peace-maker, he either fell or was pushed to the sidewalk, sustaining a laceration to the occipital region of his skull, from which he was rendered unconscious. He was carried, thus unconscious, to his own automobile, by an acquaintance, who drove the car to the Providence Hospital, at 2nd and D Sts., S.E., and on arrival there was carried into the emergency room by said acquaintance, still in an unconscious condition. On being admitted to the hospital, the night supervisor immediately called the police of No. 5 Precinct, who shortly responded. After about a five minute wait in the emergency room, an interne, (the individual defendant) appeared in said emergency room, and began to cleanse and suture the

aforesaid laceration, inserting some four sutures therein. This procedure consumed approximately a half hour, during which period the patient was still unconscious. He could therefore give no history of his injury himself, but same was obtained from his friends, who were there present. After the said suturing, the patient remained on the operating table for another hour and a half, showing some improvement, but being still "stuporous", according to the interne. He was thereafter released to the two police officers who had responded to the hospital's call to No. 5 Precinct, and taken to said No. 5 Precinct, where he was booked on a charge of "intoxication", and placed in a detention cell. Some time later that morning, a brother, learning of his whereabouts, obtained his release from No. 5 Precinct by posting the required collateral, and removed him to his home, the Francis Scott Key apartments. Plaintiff had to be carried into his apartment, and showing no improvement, the Emergency Hospital was called, and responded by sending an ambulance. Plaintiff was carried out of his apartment hotel on a stretcher and taken to Emergency Hospital, from whence he was later that same day transferred to Mt. Alto Hospital a U. S. Veterans Facility, due to the plaintiff having been a U. S. Navy veteran, and at such latter hospital it was discovered, upon X-Ray, that the plaintiff was suffering from a linear fracture of the skull, in the occipital region. He was confined to Mt. Alto hospital for approximately one month thereafter, and subsequently under the care of private physicians. He was unable to resume even partial employment at his regular business until the following July, at which time he found that a renewal of his "identification card" or sight-seeing license, had been denied and refused on account of the placing of the said charge of "intoxication" against him, even though said charge had been nolle-prossed by the Corporation Counsel, by and with the consent of the Municipal Court. Af-

ter retaining counsel, and a hearing before the license board, his license was ultimately reinstated.

While at the defendants' hospital receiving the aforesaid treatment, the police officers were present throughout the entire period of plaintiff's "observation" by the interne. Friends of the plaintiff's, also present, were insisting that the plaintiff be admitted for hospitalization, X-Ray and further observation. However, he was not admitted, but released to the police, as aforesaid. The interne made no blood or urine analysis, to confirm or rule out any question of intoxication; he took no X-Ray, to confirm or rule out any question of fractured skull; and he made no objection to the police removal of the plaintiff, although plaintiff was then his patient, and on private property. Although the interne testified that the patient's pulse rate, temperature, and blood pressure were taken, prior to the said suturing of the scalp wound, and that he detected an odor of alcohol to the patient's breath, no notation of such facts were made on the emergency room card, which was the only record kept of the incident. The only "diagnosis" made of record on such card was "lacerated scalp, four sutures", although the interne admitted that the patient was unconscious for the half hour he actually operated on him, was "stuporous" thereafter for another hour and a half, and that "he definitely was suffering from concussion" (App. 23A) He also testified that "when he (plaintiff) came in, he needed hospitalization, because he couldn't walk; he didn't respond, and he couldn't be checked neurologically. In other words, I could not ascertain if he had any injury or not. * * *" (App. 33A)

Dr. Stephen W. Nealon, Jr., who had attended plaintiff after his discharge from Mt. Alto hospital, testified "that if it had been known that the man had a fracture of the skull, of course it would be good medical practice to have admitted him to the hospital." (App. 103A)

Dr. John P. Gallagher, a neuro-surgeon who had examined plaintiff on April 26, 1950 (almost a year after the occurrence), at the request of Dr. Nealon, testified that plaintiff on that date, presented a picture or evidences of having received a concussion, and was still suffering from the effects of it (App. 107A), that such residuals, in his opinion, were the result of the concussion sustained on May 24, 1949 (App. 110A), but would not commit himself as to the question of it being good or bad medical practice to have admitted the plaintiff to hospitalization at the time, he stating that there were too many unknown factors to him. (App. 112A)

The plaintiff's movements shortly before and after the occurrence and his treatment at Providence Hospital, were corroborated by other witnesses, whose testimony is printed in the Appendix, but the foregoing statement contains the highlights of the plaintiff's case.

At the conclusion of the plaintiff's case, the trial court directed a verdict in favor of the defendants, ruling directly, as a matter of law, that neither defendant was responsible for plaintiff's arrest; that the arrest was made by the police on their own initiative; that there was no expert medical testimony as to the medical practice of admitting patients with such injuries; that plaintiff was bound by the doctor's testimony (even though he had been called as an adversary, and the announcement made at the beginning that he was being examined under Rule 43, F.R.C.P. (App. 16A)) and the court based its action upon the decision of this Court in *Kasmer v. Sternal*, 83 U.S. App.D.C. 50; 165 F.2d 624, as being "determinative of the question"; and holding that the case of *Emergency Hospital v. Harbaugh*, 84 U.S. App.D.C. 371; 174 F.2d 507 (relied upon by plaintiff), was "not in point." (App. 140A, 141A).

STATEMENT OF POINT ON APPEAL

The trial court erred in granting a directed verdict for the defendants, thereby holding that there was no triable issue of fact herein, especially when plaintiff had made a prima facie case in chief sufficient to put the defendants to a defense.

SUMMARY OF ARGUMENT

In Malpractice Cases Involving No Highly Specialized Subjects of Medicine, Such As Cancer, Tuberculosis, or Heart Diseases, and Involving Treatment or Lack of Treatment for Simple Ailments or Traumatic Injuries of Which Laymen Have General Knowledge, A Court or Jury Need Not Depend on Expert Evidence to Reach a Conclusion As To the Presence or Absence of Negligence in a Given Case, But May Draw Their Own Reasonable Inferences From the Facts Admitted Into Evidence.

ARGUMENT

In *Kasmer v. Sternal*, 83 U.S. App. D.C. 50, 165 F.2d 624, the case which the trial court considered as "determinative" of the issues in the instant case, the highly specialized subject of cancer was involved, in an action against a dentist for malpractice. That case is clearly distinguishable from the instant case, the *Kasmer* case, *supra*, having reached a jury for decision, resulting in a plaintiff's verdict, which this Court reversed due to errors of the trial court in instructing the jury. In said case, this Court stated as follows:

"All that we hold is that the record is wholly and entirely devoid of any evidence on which a jury could reach a conclusion that anything done by defendant *actually caused plaintiff's cancer, and hence that in telling the jury*

they might find that defendant caused the cancer, the court erred. The rule which we invoke in this respect is particularly applicable where, as here, the subject matter of the controversy is the *highly specialized subject of cancer, as to which laymen have no knowledge and as to which both court and jury must depend on expert evidence.* * * * (emphasis ours).

On the contrary, the later case and pronouncement of this Court, on which plaintiff relied and which the trial court said "was not in point", i.e.—*Central Dispensary & Emergency Hospital v. Harbaugh*, 84 U.S. App.D.C. 371, 174 F.2d 507, is almost identical in fact, with the exception that the ultimate injury in the Harbaugh case, *supra*, was a blood clot on the brain, and in the instant case, was a linear fracture of the skull. In both the Harbaugh and the instant case, an erroneous diagnosis of intoxication was made; the patient turned over to the police and confined to a cell before proper hospitalization and treatment was rendered. Although this Court reversed a judgment for plaintiff, on jury verdict, it did so only on the error of the trial court in failing to properly instruct the jury on the proper measure of damages in such circumstances. This Court, as to the issue of negligence and liability, stated, in the Harbaugh case, *supra*, "We have no manner of doubt that there was sufficient evidence on this score."

In *Weintraub v. Rosen*, 93 F.2d 544, the plaintiff sustained a skull fracture and a fractured hip. She was unconscious for several days. The defendant physician treated the plaintiff for the fractured skull but failed to discover the fractured hip. The plaintiff's suit alleged that the physician was negligent in failing to discover and treat her for the fractured hip. It was conceded that the injury to plaintiff's head was the more serious of the two injuries and caused her to linger between life and death for several days. The lower court directed a verdict for the defendant on the theory that the first duty of the

physician was to save the patient's life, if possible, and that even though the defendant might have been negligent in not discovering the condition of the hip, yet he could not be held for damages unless the evidence showed that he could have safely examined and cared for her injured hip without endangering her life while she was undergoing treatment for the serious condition of her head. In reversing the lower court, the appellate court stated:

"We cannot agree entirely with this theory. We think the correct statement under such conditions would be that appellees could not be held for the resulting damages, if any, if the evidence disclosed that they could not have safely examined and cared for her injured hip without endangering her life. *The error in the adopted theory lies in the fact that the court placed the burden upon appellants*, in the first instance, of proving that the patient was in a fit condition to have her hip examined and cared for without endangering her life. *This, we think, placed upon appellants a greater burden than the law warrants.* In *Davis v. Kerr*, 239 Pa. 351, 86 A. 1007, 46 L.R.A.N.S. 611, it was held that the burden of showing care was upon a surgeon who left a sponge enclosed in a wound. To meet that burden was his defense, and in the absence of supporting evidence the plaintiff's prima facie case, if made, would not be defeated. So in the case at bar, conceding that a prima facie case of negligence had been established, the burden was upon appellees, if they desired to avail themselves of that defense, to prove that the patient's condition was such that examination or treatment of her hip would have endangered her life. That defense, if established, would have been complete, even if established by appellant's evidence. It cannot be contended, however, except by unwarranted inferences, that such defense was established, and the case was disposed of because appellants had not disproved the negative of a defense which had not been established." (emphasis ours)

In the instant case, even though the X-Ray department of the defendant hospital was not open for business at 2:15 A.M., it would have been a simple matter to have furnished plaintiff a cot in the emergency room until it did open for X-Ray work several hours later, even though no bed in the hospital proper was available (a fact which was insinuated, but not proven, in the interne's testimony).

It has been held that failure to use X-Rays in a case of doubt may render a practitioner liable for damages for injuries resulting therefrom where the tenets of such practitioner's school call for the use of such X-Rays as an aid in diagnosis in cases of doubt where the conditions are similar to those in the case in suit.

See:

Bolles v. Kinton, 83 Colo. 147, 263 P. 26, 56 A.L.R. 814

Kuhn v. Banker, 133 Ohio St. 304, 13 N.E. 2d 242, 115 A.L.R. 292

In the last several decisions of this Court, it has been indicated that in malpractice actions, the facts alone may prove negligence, and, if so, it is unnecessary to have expert witnesses, and that generally, direct and positive testimony of specific acts of negligence is not required in such actions.

See: *Goodwin v. Hertzberg*, 91 U.S. App.D.C. 385, 201 F.2d 204, in which a directed verdict for defendant, after a hung jury caused a mistrial, was reversed on appeal.

National Homeopathic Hospital v. Hord, — U.S. App. D.C. —, No. 11402, decided April 9, 1953, in which a jury verdict for plaintiff was affirmed on appeal.

Garfield Memorial Hospital v. Marshall, — U.S. App. D.C. —, No. 10,984, decided April 30, 1953, in which a jury verdict for plaintiff was affirmed on appeal.

Chambers v. Tobin, — U.S. App.D.C. —, No. 11483, decided May 21, 1953, in which a directed verdict for defendant at close of plaintiff's case, was reversed on appeal. This involved alleged negligence in setting and treating a broken wrist.

In the latest decision by this Court, *Furr v. Herzmark*, — U.S. App.D.C. —, No. 11536, decided June 18, 1953, in reversing and remanding for new trial a directed verdict for defendant at close of all the evidence, this Court collates all of the important malpractice decisions in this jurisdiction, and states: "If negligence is found, *a matter for the jury to decide*, there is ample evidence with respect to pain and suffering to carry the case to the jury on the question of damages." (emphasis ours.)

CONCLUSION

In conclusion, and in view of the foregoing authorities and argument, it is respectfully submitted that the District Court erred in directing a verdict for the defendants at the close of the plaintiff's case; and that accordingly, such judgment should be reversed, and the case remanded for trial on the merits and submission to a jury.

Respectfully submitted,

EARL H. DAVIS, Esq.,
Attorney for Appellant,
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Washington 4, D. C.

APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,759

THEO. T. TAYLOR,

Appellant

v.

PROVIDENCE HOSPITAL, a body corporate,
DR. ANGEL E. SALAZAR

Appellees.

Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

276 Filed Jun 13 1950 Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

THEO T. TAYLOR,
600 - 20th Street, N.W.
Washington, D. C.

Plaintiff.

v.

PROVIDENCE HOSPITAL, INC.,
A Corporation,
Second and D Streets, S.E.
Washington, D. C.

and

DR. ANGEL E. SALAZAR,
c/o Providence Hospital,
Second and D Streets, S.E. or
c/o 4603 48th Street N. W.
Washington, D. C.

Defendants.

CIVIL ACTION NO. 2579-'50

Complaint

(Damages for Professional Negligence, Malpractice,
Wilfull and Malicious Treatment, Unlawful Deten-
tion, and False Imprisonment.)

(1) This Court has jurisdiction of the subject matter hereof, by virtue of Title 11, Section 306, Code of Laws for the District of Columbia, 1940 Edition as amended,

and for the further reason that the relief herein sought exceeds the sum of \$3,000.00.

(2) The plaintiff is an adult citizen of the United States, a resident of the District of Columbia, and brings this action in his own right.

(3) The defendant, Providence Hospital, Inc., is a corporation organized and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business at Second and D Streets, S.E., in the District of Columbia, and is sued herein in its own right.

(4) The defendant, Dr. Angel E. Salazar, is an adult citizen of the United States, a resident of the District of Columbia, is engaged in the general practice of medicine in the District of Columbia, and is sued herein in his own right, and as the agent of the corporate defendant.

(5) On, to-wit, May 25, 1949, the plaintiff, who
277 had been forcibly and violently assaulted by being struck on the head with an unknown object and by a person or persons unknown to him, had been removed by friends from the scene of said assault near First and B Streets, S.E., in the District of Columbia, to the hospital of the defendant, Providence Hospital, Inc., a corporation, for examination, medical care and hospitalization.

(6) That upon arrival at the hospital conducted by said corporate defendant, plaintiff was admitted to the emergency room, where the agents, servants and employees of said defendant, after administering first aid and suturing several lacerations in plaintiff's scalp, wrongfully, carelessly, and with gross negligence, diagnosed plaintiff's condition as being drunk, and treated him for alcoholism, when as a matter of fact said plaintiff was suffering from a fractured skull, a severe concussion

of the brain, and was in immediate need of hospitalization.

(7) That the said Dr. Angel E. Salazar (an interne, or physician, employed by the said defendant hospital, and in his own capacity, carelessly, unskillfully, and with gross negligence, examined and treated said plaintiff; and after making the insertion of sutures in plaintiff's scalp, as aforesaid in Paragraph (6), said individual defendant, with gross negligence, and erroneously, diagnosed plaintiff's condition as that of drunkenness, and treated him for same. That the said defendant hospital, and the individual defendant Salazar, utterly failed, neglected, and wrongfully refused and failed to admit plaintiff to hospitalization for treatment and observation, and to give him immediate medical treatment and attention for such fractured skull, shock and concussion, of which he was then in dire need, and the said defendants negligently failed to see that he did receive proper and necessary medical attention, and negligently failed to X-Ray plaintiff's skull to thus rule out the possibility of fracture, when by the exercise of ordinary care, prudence and precaution, such confirmation of diagnosis by X-Ray would have suggested itself even to a hospital orderly in view of plaintiff's visible physical injury, and the said defendants allowed and permitted the plaintiff to be promptly removed from their said emergency room by Metropolitan Police officers in the early morning of May 25, 1949, to the No. 5 Precinct of said Metropolitan Police Department, where plaintiff was charged as being drunk, in accordance with the negligent diagnosis of said defendants.

(8) That while in a stupor, and suffering from a severe concussion of the brain, and otherwise suffering great pain of mind and body, plaintiff was confined in a cell at the said No. 5 Precinct, without any medical care or attention for a long period of time, until knowledge

of his arrest on said charge of drunkenness came to the attention of plaintiff's brother, who secured plaintiff's release from said Precinct by posting the required collateral, whereupon plaintiff was removed to his home, but not responding to treatment for such alleged "drunken" condition, he, being a Navy veteran, was removed to Mt. Alto Hospital of the U. S. Veterans Administration, later in the day, where, upon immediate X-Ray examination, it was discovered that plaintiff had sustained a fracture on the right side of the occipital bone, measuring approximately 5 cm. in length, for which condition he was admitted to said Mt. Alto Hospital, where he was obliged to remain for observation and treatment for approximately one month under the care of physicians at said hospital, and upon his discharge from said Mt. Alto Hospital he was under the care and observation of a private brain specialist for a long period of time.

(9) That from the time plaintiff's condition was so negligently and carelessly diagnosed by the defendants, plaintiff has suffered great mental and physical pain and anguish, his recovery has been retarded because of said lack of treatment and prompt hospitalization and medical care, which, because of such negligence, was postponed as aforesaid. Plaintiff also suffered great humiliation and discomfort in being unjustly confined and unlawfully detained as a result of said negligence, and, although when the true facts were made known to
 279 the police and prosecuting authorities the said charge of "drunkenness" was nolle prossed, plaintiff was put to great expense due to the necessity of retaining counsel to secure the renewal of his chauffeur's identification license, same having been originally denied because of his arrest on said charge; and he lost great sums of money due to his illness resulting from such negligence of the defendants, and his inability to work at his usual business as a sight-seeing guide, due both to

his injuries and the fact that his license had been held up due to the placing of such charge against him based upon the defendants' erroneous diagnosis.

WHEREFORE, by reason of the foregoing recklessness, gross negligence and malpractice of said defendants, and said unlawful detention, arrest and imprisonment of said defendants, gross negligence and malpractice of said defendants, as aforesaid, plaintiff brings this action and demands judgment against the said defendants, jointly and severally, in the full sum of \$50,000.00, besides the costs of this action.

DAVIS & HARTH,
Attorneys for Plaintiff,
By /s/ Earl H. Davis
Earl H. Davis, Esq.

* * * *

280 Filed Jun 28 1950 Harry M. Hull, Clerk

*Answer of Defendant, Providence Hospital, Inc., a
Corporation to Complaint*

The above named defendant admits the allegations contained in paragraphs one, two, three and four of the complaint; it admits that on the date alleged the plaintiff came to its' hospital for treatment, but it is without information or belief sufficient to either admit or deny the other allegations of paragraph five; it admits that it administered first-aid and suturing to lacerations in the plaintiff's scalp; it admits that it employed as an interne, the defendant, Salazar, who examined and treated the plaintiff; it denies each and every allegation of negligence on its' part, or on the part of the other defendant; it admits that the plaintiff was removed from the emergency room by Metropolitan Police Officers, on the date alleged; it is without information or belief sufficient to

either admit or deny the allegations contained in paragraph eight; it denies each and every allegation contained in paragraph nine of the complaint, with respect to it; it is without information or belief sufficient to either admit or deny the other allegations contained in paragraph nine of the complaint; it denies each and
 281 other allegation contained in the complaint.

/s/ Richard W. Galiher
 Richard W. Galiher

* * * *

282 Filed Jul 14 1950 Harry M. Hull, Clerk

*Answer of Defendant, Dr. Angel E. Salazar,
 to Complaint*

1st Defense

The Complaint fails to state a claim against the defendant upon which relief can be granted.

2nd Defense

The above-named defendant admits the allegations contained in Paragraphs 1, 2 and 3 of the Complaint; defendant denies that he is engaged in the general practice of medicine in the District of Columbia; with respect to Paragraph 5 he admits that on the date alleged the plaintiff came to Providence Hospital, Inc., for treatment, but he is without information or belief sufficient either to admit or deny the other allegations of Paragraph 5.

Defendant admits that he administered first aid and suturing to lacerations of the plaintiff's scalp, being then employed as an interne by the defendant Hospital; defendant denies each and every allegation of negligence on his part or on the part of the other defendant; de-

defendant denies that he diagnosed plaintiff's condition as drunkenness or alcoholism.

283 Defendant denies each and every allegation of negligence on his part or on the part of the other defendant as set out in Paragraph 7 of the Complaint; defendant admits that the plaintiff was removed from the emergency room of Providence Hospital by Metropolitan Police Officers on the date alleged. Defendant is without information or belief sufficient either to admit or to deny the allegations contained in Paragraph 8. The defendant denies each and every allegation contained in Paragraph 9 of the Complaint, with respect to him; defendant is without information or belief sufficient to either admit or deny the other allegations contained in Paragraph 9 of the Complaint; and defendant denies each and every other allegation contained in the Complaint.

/s/ Joseph A. Barry
Joseph A. Barry

* * * *

284 Filed May 1 1952 Harry M. Hull, Clerk

Pretrial Proceedings

STATEMENT OF NATURE OF CASE:

PLAINTIFF's position is set forth in "Factual Statement" which is attached hereto. DEFENDANT, Providence Hospital, Inc., has attached "Pretrial Statement of Providence Hospital" and "Pretrial Factual Statement of Defense of Dr. Angel E. Salazar" is also attached hereto.

STIPULATIONS:

It is stipulated that Police Collateral Receipt may be received in evidence without formal proof subject to objection as to relevancy.

Check made to the order of Theodore T. Taylor in the amount of \$10.00 may be received in evidence without formal proof subject to objection as to relevancy.

Certificate of Enlistment of Theo. Thomas Taylor, Bureau of Naval Personnel, Navy Dept., may be received in evidence without formal proof subject to objection as to relevancy.

Certified record of proceedings in the Municipal Court of the District of Columbia, dated July 15, 1949, may be received in evidence without formal proof subject to objection as to relevancy.

PLAINTIFF will stipulate he is the same Theodore Thomas Taylor who in 1932 was convicted in Akron, Ohio, of possessing gambling equipment and counsel for defendant insists that the conviction carried the illegal sale of punch boards.

Counsel for plaintiff will supply counsel for deft. with medical reports of Dr. Nealon and Dr. Gallagher.

285 SPECIAL DAMAGES: Dr. Nealon \$150.00; Dr. Galalgher \$15.00; x-rays \$25.00; Loss of earnings \$1200.00; E. H. Davis, atty's. fee \$100.00, Total \$1490.00.

LEAVE IS GRANTED TO AMEND COMPLAINT BY INTERLINEATION.

STIPULATIONS: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

/s/ James R. Kirkland
Pretrial Justice.

Dated May 1, 1952.

REMARKS of Pretrial Justice for consideration of
Trial Justice:

Attorneys authorized to act:

/s/ Earl H. Davis
Plaintiff.

/s/ R. W. Galiher
Defendant.

286 FACTUAL STATEMENT:

Theo T. Taylor, 44 years of age, a licensed sight-seeing guide in the District of Columbia, was admitted to the emergency room of Providence Hospital on the early morning of May 25, 1949, suffering from a severely lacerated skull sustained as the result of trying to break up an altercation at First & B Sts., S.E., involving a friend of his and another. Someone had struck Taylor on the head with a bottle. He had not been in the altercation himself. An interne at said hospital (the individual defendant) sutured Taylor's skull laceration, then turned him over to the police of No. 5 Pct., who arrested him on a charge of intoxication. At that time Taylor was not intoxicated, but was suffering from concussion, shock, and injury. Later the same day, on being released from No. 5 Precinct, on collateral posted by Plaintiff's brother, Taylor was still in the same physical condition. On being taken to Mt. Alto Hospital after his release from No. 5 Precinct he was found to be have a fractured skull, as corroborated by X-Rays.

Negligence claimed is the hospital's failure to admit Taylor as a patient for observation and to X-Ray him at the time; also defendant's erroneous diagnosis of intoxication as plaintiff's condition.

He was admitted to Mt. Alto Hospital on May 25, 1949, and was not discharged until June 22, 1949. He is still

under treatment for brain injury residual from such skull fracture. He is only working part time at present.

STIPULATIONS:

- (1) Honorable discharge from U. S. Navy.
- (2) Police Collateral receipt No. 1192499
- (3) Certified transcript of nolle prosequere
- (4) Photostat of refund check for collateral

* * * *

287 *Pretrial Statement of Providence Hospital*

This defendant admits that it is a corporation operating a hospital in the District of Columbia; it admits that it employed as an interne the co-defendant who examined and treated the plaintiff; it denies each, and every allegation of negligence on its' part, or on the part of the other defendants; it admits that the plaintiff was removed from the emergency room of its' hospital, by the Metropolitan Police Officers, on the date alleged; it denies that plaintiff's injuries or condition, were in any way due to treatment rendered by it, or by its' agents.

* * * *

288 *Pretrial-Trial Factual Statement of Defense of Dr. Angel E. Salazar*

1. Defendant denied each and every allegation of negligence as to the alleged diagnosis of drunkenness. Defendant denies that he made any such diagnosis.

2. Defendant denies all allegations of negligence with respect to plaintiff's not being admitted to Providence Hospital; defendant denies all allegations of negligence with respect to plaintiff's alleged arrest by the Metropolitan Police Department.

3. Defendant alleges that any and all damages suffered by plaintiff, if any, were caused by the negligence of plaintiff himself or by his contributory negligence, or by the negligence of persons other than either Dr. Salazar or the corporate defendant.

/s/ Joseph A. Barry
 Joseph A. Barry
 Attorney for Defendant,
 Dr. Angel E. Salazar
 Barr Building
 Wash., 6, D. C.

* * * *

Verdict and Judgment

This cause having come on for hearing on the 27th day of October, 1952, before the Court and a jury of good and lawful persons of this district, to wit:

Saml. U. Padgett	Graham J. Holthouser
Hunter S. Harris	Karl D. Vass
Millicent E. R. Goode	Comer W. Gilstrap
Eugenia E. Griffith	Selena B. Godfrey
Maggie P. Lacy	Robt. R. Harrington
Marie E. Muscia	Ruth P. Dedicott

who, after having been duly sworn to well and truly try the issues between Theo T. Taylor, plaintiff and Providence Hospital Inc., and Dr. Angel E. Salazar, defendants and after this cause is heard and given to the jury in charge, they upon their oath say this 29th day of October, 1952, that they find for the defendants against said plaintiff by direction of the Court.

Wherefore, it is adjudged that said plaintiff take nothing by this action, that said defendants go hence

without day, be for nothing held and recover of plaintiff their costs of defense.

HARRY M. HULL, *Clerk,*
By /s/ Irene B. Burroughs
Deputy Clerk.

By direction of Judge Alexander Holtzoff

* * * *

293 Filed Jan 5 1953 Harry M. Hull, Clerk

Notice of Appeal.

NOTICE is hereby given this 5th day of January, 1953, that THEO T. TAYLOR, plaintiff, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th day of DECEMBER, 1952 in favor of the defendants, Providence Hospital, a body corporate, and Dr. Angel E. Salazar, against said Theo T. Taylor, plaintiff.

/s/ Earl H. Davis
Earl H. Davis

* * * *

22 THE COURT: You may proceed, Mr. Davis.

MR. DAVIS: Would you call the young lady designated to bring the records of Providence Hospital here.

MR. GALIHER: Mr. Davis, I have the complete records of Providence Hospital, which I am glad to turn over to you.

* * * *

THE COURT: I think this ought to be stipulated. I don't think we ought to take up time by introducing technical proof on the subject.

What do you wish to establish Mr. Davis?

MR. DAVIS: The emergency room records, if the Court please, showing the admission of this patient, the treatment they gave him.

THE COURT: I thought you said something about records of Doctor Salazar.

MR. GALIHER: He wanted those here, Your Honor.

* * * *

THE COURT: It seems to me the question of employment should be stipulated.

23 MR. GALIHER: And I also have the emergency room records. I may say to Mr. Davis, that is everything that they have.

* * * *

MR. DAVIS: No, Your Honor. I will segregate these papers so there will be no doubt about what is to be admitted.

I will offer this group of papers, containing one, two, three, four papers, as Plaintiff's Exhibit No. 1.

THE COURT: What are they?

MR. DAVIS: The records of Providence Hospital showing the admission of the plaintiff as their patient.

THE COURT: Is there any objection?

MR. GALIHER: No objection, Your Honor.

* * * *

24 MR. GALIHER: We will stipulate, Your Honor, that Doctor Salazar was an interne in the employ of Providence Hospital on the day of this occurrence.

THE COURT: And that he was a doctor of medicine, admitted—

MR. GALIHER: Your Honor, Doctor Salazar, I understand, was a graduate from Georgetown Medical School; but at that time he had not been licensed to practice.

THE COURT: But he was an interne in the hospital?

MR. GALIHER: Yes, sir.

MR. DAVIS: And that he was an agent, servant or employee of the hospital. Will you stipulate that.

MR. GALIHER: That is correct, sir.

* * * *

THE COURT: And I will admit that as Plaintiff's Exhibit No. 1.

(The first page of the Providence Hospital records file was marked and received in evidence as Plaintiff's Exhibit No. 1.)

25 MR. DAVIS: Ladies and Gentlemen of the Jury, Exhibit No. 1 on behalf of the plaintiff is the Providence Hospital emergency department record bearing the number at the top, No. 54265—

"Name: Taylor, Theodore.

"Address: 1625 First Street, Northwest"—with a question mark after it.

"Charge: \$6.00.

"Date: 5-25-49.

"Time of arrival: 2:15 a.m.

"Time seen by patient: 2:20 a.m.

"Age: 41. White. Male.

"Occupation:"

—blank.

"History: Friends state he fell on pavement and cut his head.

"Where occurred: In front of 143 B Street, Southeast.

"How brought to hospital: Car.

"Disposition of case: Discharged to police.

"Brought in by: Friend.

"Responsible party: Self.

"Diagnosis: Lacerated scalp, four sutures.

"Treatment: Four sutures. DD applied."

I assume that means dry dressing.

26 MR. GALIHER: Yes, sir.

MR. DAVIS: (Resuming reading:)

"Tetanus antitoxin, yes or no:"

—blank.

"Police: No. 5.

"Nurse:"

—it looks like Milledges—M-i-l-l-e-d-g-e-s. Is that correct?

MR. GALIHER: I think so.

MR. DAVIS: (Resuming reading:)

And down at the very bottom is a pencil notation bearing the statement "Dry dressing applied, SRC 10-24-52."

* * * *

27

Dr. Angel E. Salazar,

* * * *

Direct Examination

BY MR. DAVIS:

Q Will you state your full name, please. A Angel E. Salazar.

Q How old are you? A Thirty.

* * * *

Q Where do you live, sir? A I live in Chantilly, Virginia.

Q What is your occupation? A Physician, general practice.

Q From what school did you receive your MD degree? A Georgetown.

Q And in what year, sir?

THE COURT: Of what relevancy is the past history of this witness?

28 MR. DAVIS: Well, I want to test his background experience to treat a patient.

THE COURT: Oh, no. You have called him as your witness.

MR. DAVIS: But under Rule 43, as an adversary, if the Court please. He is the defendant, if the Court please.

THE COURT: He is not charged with being inexperienced. There is no charge in the complaint that he is inexperienced or incompetent.

BY MR. DAVIS:

Q What year did you say you received your degree?

THE COURT: No. I have ruled that question out.

BY MR. DAVIS:

Q After receiving your MD degree, where did you intern, Doctor? A Providence.

THE COURT: It has been stipulated that at the time involved in this case this witness was an intern at Providence Hospital; you don't have to prove it.

BY MR. DAVIS:

Q How long prior to May the 25th, 1949, had you been an intern at Providence? A I started internship on July 1st, 1948.

Q So you had been there as an intern approximately ten months. A That is right.

Q Now, while interning at Providence, to what part of the hospital or to what department of the hospital were you assigned? A Prior to being in the emergency room?

Q Yes.

* * * *

THE WITNESS: I was in medicine, surgery, out-patient department. That's about all. I believe I had obstetrical to go, later on.

BY MR. DAVIS:

Q In other words, you did various duties in the various wards of the hospital? A That is right.

Q And how long prior to May 25th, 1949 had you been on duty in the emergency room? A That would be on the record. I believe no less than three weeks.

Q No less than three weeks. Now directing your attention to the night of May the 24th and the early morn-

30 ing of May the 25th, 1949, were you on duty in the emergency ward on those dates? A I was, the night Mr. Taylor came in.

* * * *

Q Doctor Salazar, were you in the emergency room when this patient was brought in? A No. I was called in, by the nurse.

Q How many nurses were on duty at that time in the emergency room? A The emergency room was
31 closed, and the patient comes in by the main entrance, and the night supervisor receives the patient, and decides to give treatment, or not, whatever can be done.

Q You mean that Providence Hospital does not maintain a 24-hour emergency room service? A I don't know about Providence Hospital policies.

Q But on this particular occasion, the emergency room itself was closed? A I was called in to see the patient.

Q Were you informed that the patient had been brought in the main entrance? A I was informed that there was a patient in the emergency room.

Q And he had come in the main entrance, to your knowledge, and was taken to the emergency room. It was opened for him? Is that correct? A All I know is that the patient was in the emergency room waiting for me for treatment.

Q Do you know the name of the nurse who was on duty that night? A Miss Megles.

Q How do you spell it? A M-e-g-l-e-.

Q Now what was the condition of the patient when you first saw him that morning in the emergency
32 room? A His condition was stuporous—not unconscious, but stuporous—a person who reacts, but is not conscious.

Q Was he bleeding from any part of his anatomy? A The bleeding was checked, sealed by itself. He had a laceration on the skull.

Q You are indicating now the occipital region of the right rear skull. A I was just scratching myself. He had it in the skull, the occipital area.

Q Was he able to tell you how he sustained that injury? A Well, the history was taken that he fell on the sidewalk; and at that time that's all they said.

Q Was he conscious or unconscious at the time of his admission to the emergency room? A This man was stuporous.

* * * *

Q Did he give you this history of how he sustained the injury, or did someone else with him? A No. The history was given mainly by two persons—a young
33 girl about 18 or 19 years old, and a man who took most interest in him, but was not celebrating with that party. In other words, he was not in the four-people party that were celebrating that evening.

Q Do you know his name? A From reading all the records, I believe it was Cookie Clark.

Q George C. Clark. A Cookie Clark, that's all I know.

Q Did you also see a fireman, a D. C. fireman, present on that occasion? A Not with the uniform, anyway.

Q Regardless of the uniform, did a man identify himself to you as a D. C. fireman, on that morning? A I don't recall. It might have been, or not.

Q So that as a result of this stuporous condition of Mr. Taylor, he himself was unable to tell you anything about how this injury had occurred? A That's right.

Q Now, did you personally attend the first aid that was given to him, or did the nurse do that? A I did, personally.

Q Did you have to shave the back of his head to suture this laceration? A That's right.

34 Q What size of an area did you shave before making these sutures? A The laceration was five centimeters long, which is two inches long; and you

usually shave about half an inch around it. And that's the way I probably did it.

Q After shaving the back of his head, preparatory to suturing, did you apply any cleansing antiseptic? A It is always used—soap and water, and then an antiseptic.

Q How many sutures did you actually apply? A Four.

Q During any part of that period, did you have any conversation with Mr. Taylor? A Before he was discharged, yes.

Q Approximately how long did it take you to prepare him, with this shaving procedure, the cleansing and the suturing? How much time did that consume? A No less than half an hour. About half an hour.

Q And during any part of that half an hour, did he show any improvement in this stuporous condition you speak of? A Not immediately. Not during the half an hour.

Q Did he have any alcoholic odor to his breath? A That was stated by the police and all the other people around, that he had—

35 THE COURT: Suppose you just answer from your own knowledge.

THE WITNESS: From my own knowledge I would say yes.

BY MR. DAVIS:

Q He did? A Yes.

MR. DAVIS: May I see Exhibit No. 1, if the Court please?

BY MR. DAVIS:

Q I refer you to this Exhibit No. 1, Doctor, and ask you why you did not make any notation of the fact that this patient showed an alcoholic odor of the breath. A Because it was irrelevant.

THE COURT: Just a moment.

MR. GALIHER: I object to that, Your Honor.

THE COURT: On what grounds?

MR. GALIHER: On the ground that he made a diagnosis, as is indicated.

THE COURT: I think, in view of the fact that he is a hostile witness and an adverse party, this is proper.

MR. GALIHER: All right, sir.

THE COURT: I am going to overrule the objection.

THE WITNESS: Because I thought it was irrelevant, and because it wouldn't do any good to him to put a diagnosis like that, or any harm, and would not affect
36 the diagnosis at all, anything like that.

BY MR. DAVIS:

Q Doctor, isn't it the usual practice of not only Providence, where you interned, but Georgetown, where you formerly interned, where an accident case comes in, or any patient with injuries, that has an alcoholic odor of the breath, to put the initials AOTB on the record itself?

THE COURT: I don't see the relevancy of it. He said he didn't put it down, because he said he didn't think it would do anybody any good.

BY MR. DAVIS:

Q When did he show any improvement, if he did, in this stuporous condition that you have described? A It would be about one hour, one hour or one hour and a half after he came in. That is when he showed improvement. He vomited; and after vomiting, he improved his condition. And in the meantime he was checked for any kind of an intercranial injury or damage. That is the only thing you have to watch with people with injuries of the head, and that is examining of the pupils and reflexes to see if a person is having any injury inside the brain. Because men like him, we had at least two or three every night. In other words, he was not a different case from anybody else, and we handled them the way we handled
37 him. The only thing you have to be careful of is of intercranial injury, and that is why he stayed there in the emergency room for two hours.

Q He was there altogether for two hours before you discharged him to the police? A At least, yes. And in that time he didn't show any immediate danger, and therefore had to be discharged.

Q Were the police there all of that time waiting for his discharge? A The police was there to see what the outcome would be, since he did not have a residence in the District of Columbia. He gave this address; and we had the operators from the telephone company to check on this address, and other addresses that were given to us. And in every place, they said "Yes, he used to live here, but not any more, and we don't have any forwarding address." We received two of those addresses, and we checked.

Q As a matter of fact, Doctor, didn't you look in his inside coat pocket and find this card? A I don't recall exactly if there was this card or not. It might have been. But the police checked too, and you could check with the police records, too.

Q And you say he gave you an address of 1625 First Street, Northwest, as his residence? A That record was part of the records taken by the night supervisor.

38 Q At that time, Doctor, after inserting these sutures, how long did you keep him under your personal observation? A Well, he stayed no less than two hours. That would be one hour and a half after finishing the treatment.

Q My question was, was he under your direct supervision during that entire period? A That's right.

Q Did you notice whether or not he was suffering from a condition of post syndrome concussion?

THE COURT: What is that, Mr. Davis? I am not familiar with that term.

MR. DAVIS: Well, I would rather ask the Doctor that, if Your Honor please.

THE COURT: You are asking him a question. You must know what your question means.

BY MR. DAVIS:

Q You know what I mean by a post syndrome concussion, do you not, Doctor? A Well, that is a very ambiguous term.

Q What is the medical definition of it? A Post means after, as anybody would know with a knowledge of Latin. Syndrome means complex of symptoms. In other words, it is not a definition, it is not a knowledge of something. It is just a complex of symptoms that could be the same for a lot of different conditions.

39 Q And concussion, it is the same thing that fighters or anybody who gets knocked out suffers. In other words, it is a blackout.

Q And a concussion is a brain injury, is it not, a shock of the brain? A Concussion is a temporary passing out, without any permanent damage.

Q Did you notice this patient suffering with any degree of concussion, whether slight— A He was.

THE COURT: Suffering with what?

BY MR. DAVIS:

Q Was he suffering with any degree of concussion, whether slight, moderate or severe? A He definitely was suffering from concussion.

Q He was? A As you probably will have more testimony later on.

Q Doctor, at any time during that two-hour period, did you take an X-ray of this man's skull, particularly of the right, rear occipital region? A No X-ray was taken, for two reasons: * * *

* * * *

40 Q Doctor, Providence Hospital is one of the more modern hospitals in this city, is it not?

THE COURT: I think the Court will take judicial notice of that.

BY MR. DAVIS:

Q Does it have, in addition to the regular X-ray room, operated by Doctors Groover, Christie and Merritt, or

Doctors Kaylin and Lybeth— A Kaylin and Lybeth.

Q They have the X-ray concession, do they not, at Providence Hospital? A Yes, I believe so.

Q Now, in addition to the regular X-ray room to which patients are taken, did Providence Hospital have portable X-ray squipment at that time? A I was not acquainted and I never used the X-ray machinery at Providence Hospital.

Q You had been there for some ten months before this occurred— A That's right.

* * * *

41 THE WITNESS: But Providence Hospital did not own, and I had nothing to do with X-ray.

BY MR. DAVIS:

Q You said X-rays were not taken for two reasons. What were those two reasons? A No. 1, there were no personnel available at the time; and No. 2, it was not an emergency, to get an X-ray, because an X-ray would not solve any question, one way or the other.

I forgot to mention that when I put the sutures, I felt the man's scalp, to see if there would be any depression of the bones. Depression of the bones means crushing and therefore pressure on the brain, or bleeding inside of the brain, and that would be dangerous. But a linear type of fracture is something that is not considered—well, I am not an authority or an expert—

Q Well, there is such a thing as a linear fracture of the skull, is there not, Doctor? A That's right.

Q And that cannot be determined simply by manipulation, can it? A That's right.

Q You have got to rule it out, either positive or negative, by confirming it by X-ray; isn't that true? A That's right.

* * * *

42 Q Was the X-ray department operated by Doctors Kaylin and Lybeth open at that time, between two and four AM? A It was not open; it was closed.

Q And you are unable to tell us about the portable X-ray equipment, whether the hospital had it or not?

A I had no training and no knowledge of the equipment.

Q Well, Doctor, was there any electro-encephalogram made concerning this patient's skull and the possibility of brain damage? A That is not emergency treatment.

Q The Providence Hospital does give those electro-encephalograms, does it not? A They do; but I have never seen any procedure like that done as an emergency procedure.

Q But none was made of this patient on that morning? A How could it?

Q Now, Doctor, is it not also a symptom of skull fracture that a person is stuporous? A A symptom of a skull fracture?

43 Q Yes. A No.

Q That is not a symptom of a skull fracture? A No. A skull fracture is a break of the bone.

Q Do you recall talking to me, Doctor, on August the 24th, 1949, concerning this case? A Yes.

Q By telephone? A Yes; you called me.

Q Yes. And do you recall telling me that Mr. Taylor appeared to be drowsy and sleepy? A Stuporous—that's right.

Q Now, you mean stuporous is synonymous with drowsiness and sleepiness? A It might not be synonymous; but it is another way of describing it to your. At the time, that is the best way I could describe it.

Q Isn't drowsiness and sleepiness also one of the symptoms of skull fracture? A Anybody who is sleepy is that way, too. In other words, it is not a specific; but it is one of the symptoms.

Q It is one of the symptoms of skull fracture. A Not a specific, no.

Q Did you tell me on August the 24th, 1949 that he was unable to talk? A That's right.

* * * *

44 Q Did you tell me on August the 24th, 1949, Doctor, that there were no evidences of concussion?

A I don't believe that. The only thing I might have said was no evidence of intercranial injury.

Q Now, at the same time you were observing this patient, one or more of these friends of his were insisting that he be admitted for observation, were they not? A Yes, for those people had one purpose in mind—to go home to sleep. But they didn't want to go ahead and take care of the patient themselves or take the responsibility of it.

Q Do you remember a Mr. Varella, the fireman, telling you that he had seen this man fall and strike his head on the pavement, and that for fear of brain damage you ought to admit him? A I don't recall that.

Q Would you deny that you made that statement to Mr. Varella? A Well, that statement might have
45 been said. I don't know. The man stayed in the emergency room for two hours, and his condition changed completely, from the way he came in and the way he left. He came in in a stretcher. I mean, he came in in a stuporous condition, and he left walking and saying he felt much better. Nobody had to drag him out, or anything like that.

Q Are you able to tell us, Doctor, whether or not Mr. Taylor walked in the hospital and into the emergency room, or was he carried in? A He left on his own full power, and nobody led him away.

Q I asked you how he came in, not how he left. A I said he came in stuporous, brought in.

Q Was he carried in, or did he walk in? A I didn't see him.

* * * *

46 Q Was he on the table in the emergency room, Doctor, when you first saw him? A Yes.

* * * *

50 Q Now at any time, Doctor, during the period of two hours that you say you had had him under your observation, did you take his blood pressure? A Yes, I did.

Q Will you tell us what it was. A I don't recall it right now; but it was within normal limits. He was not in shock.

Q Did you make any record of the exact diastolic and systolic pressure? A I did not.

Q You did not. A I did not put it in writing.

Q Did you at any time take his temperature, Doctor? A That is taken routinely by the nurse.

Q Will you tell us whether any record was made of that? A I don't know about the record made of that.

Q Did you at any time take his pulse rate, Doctor? A Yes, I took it.

Q Will you tell us what that was? A That was within normal ranges, between 70 and 80; but it was not recorded.

Q * * * Now, immediately on finding him on the operating table, did you then start to make these sutures—cleanse the area and suture the area? A As soon as it was felt the need to put the sutures, yes.

Q Was that before or after you took his pulse, blood pressure and temperature? A The patient is always examined before he is treated. And therefore the suturing was a part of the treatment. So he was examined first.

52 Q Do I understand now that someone other than yourself took the blood pressure, the temperature and the pulse of the patient? A The temperature is taken by the nurse, and the other part of the examination is done by the doctor.

Q The doctor in this case was you. A That's right.

Q There was no other intern in the emergency room that morning, was there? A No, sir.

Q And was there any other nurse aside from Miss Megles? A No, not in the emergency room.

* * * *

Q Doctor, during this period of two hours that you had Mr. Taylor under observation, was he on the table all that time? A Up until half an hour before he left.

53 Q I believe you said yesterday he was in the hospital altogether about two and a half hours. Is that correct? A About, yes.

Q And he was actually on the operating table for two hours? A More or less, yes.

Q At any time during that two-hour period, did you apply or instruct to be applied an ice bag to Mr. Taylor's head? A I never saw the indication for that.

Q I take it from your answer, you did not. A I did not.

Q Doctor, on the occasion of this two-hour observation, did you perform such a thing as a lumbar spinal puncture on this patient? A That is contra-indicated, and I did not do it.

* * * *

54 Q Doctor, is the increasing of the blood pressure of a patient suffering from concussion, and the lowering of the pulse rate, indicative of a brain compression? A According to textbooks, yes. I believe so.

Q Doctor, is it a fact that a shaking up of the brain usually causes a swelling of the brain, which is known in medical parlance as edema, or a soft tissue swelling? A Edema is a soft tissue swelling, yes.

Q And in your limited experience as an intern, and now in private practice, have you ever seen a case of a brain concussion, without even a laceration or a fracture? A Well, you can never see that condition, because in order to see that condition you have to have the skull open. And I don't think I will ever see it.

Q Well, of course, a concussion is something inside the skull involving the brain. That is true, is it not?

A It is assumed, and there is no definite proof. All you use is your eyes, ears and touch.

Q We know you can't see a concussion, being inside the skull; but you can see the manifestations of it or the symptoms of it, can you not? A You can make an accurate guess or diagnosis.

Q Now on this matter of concussion, which you said yesterday you found, can you tell us whether the
55 concussion you found Mr. Taylor suffering with was of what degree? A Well, you have to consider the fact that he had been drinking, and therefore he could have very mild degree of concussion, made worse by the drinking. * * *

* * * *

Q You would classify his concussion, then, as a mild concussion?

* * * *

THE WITNESS: Yes; I would consider it mild.

BY MR. DAVIS:

Q Now, Doctor Salazar, there are two schools of thought in the medical profession concerning concussions. Isn't that true? A I don't know.

* * * *

56 Q Is it a fact, Doctor Salazar, that the first school of thought in the medical profession believes that a concussion is a minor shaking up of the substance of the brain, resulting in tiny, pin-point hemorrhages, known as petechiae—p-e-t-e-c-h-i-a-e—in the substance of the brain, that clear up within 24 hours, with no permanent symptoms? Is that a fact, sir?

THE COURT: You asked whether that was a concussion.

MR. DAVIS: Yes, Your Honor.

THE COURT: You just used the word "fracture"—just now.

MR. DAVIS: If I did, it was inadvertent, Your Honor. I meant to limit that to concussion.

THE COURT: Very well.

THE WITNESS: All those are of pathological or of academic interest. But that wouldn't have anything to do or bear with the patient's condition.

* * * *

MR. DAVIS: Is that according to one school of thought.

57 THE COURT: Whether that constitutes concussion, according to one school of thought.

THE WITNESS: I believe so, yes.

BY MR. DAVIS:

Q Now isn't it a medical fact, Doctor, that the second school of thought is that concussion is a more serious injury to the brain, and may cause death; and that second school further claims that a concussion of this nature, if early recovery takes place, may in later life cause late effects?

Isn't that the second school of thought, relative to concussion? A That would be concussion with internal hemorrhage.

* * * *

58 Q Doctor, have you ever had any experience, or have you ever learned in your medical studies, of cases of death following concussion, where there was no fracture or not even a laceration of the scalp? A Not of concussion; but yes of internal hemorrhage.

Q You have heard of such cases? A Of internal hemorrhage, with all the neurological manifestations.

Q Doctor, since the happening of your treatment to Mr. Taylor in this instance, have you discussed this matter with Miss Megles, the nurse? A Since the accident?

Q Yes—since May the 25th, 1949. A Not in detail.

We only discussed that this man was complaining about it. That is all.

* * * *

59 Q Do you know whether someone from Providence Hospital called the police at No. 5 precinct?

A It is routine to call the police, in accidents.

Q So someone did call, to your recollection, No. 5 precinct? A It is the night supervisor's duty to do that.

* * * *

Q How many night supervisors are there at
60 Providence Hospital? A Only one.

Q And do you recall the name of the night supervisor who was on duty this night? A Only one there at each night. In other words, they alternate. There are about two or three.

Q Do you know the name of the night supervisor who was on duty the night of May 24 and the early morning of May the 25th, 1949?

* * * *

THE WITNESS: I answered that question yesterday, and I spelled her name—M-e-g-l-e-s.

BY MR. DAVIS:

Q That was the nurse. My question was the name of the night supervisor. A She is the night supervisor and nurse.

* * * *

61 Q Doctor, do you know the time that the night supervisor placed the call to No. 5 precinct? A I don't recall it. That is her duty.

Q Do you know when the police arrived? A The police was there when I arrived.

Q Before any treatment was rendered to Mr. Taylor at all, the police were there? A Yes.

Q And did they stay there the entire two and a half hours while you had him on the table? A Except for

five minutes, I believe. I don't recall very well; but I believe they left for five minutes and came back.

Q Do you know why the police took jurisdiction of Mr. Taylor? A Because he had no place to go, no address in the city of Washington, and all efforts to hospitalize him failed, because of lack of beds, and lack of papers in his possession.

THE COURT: Let me see if I understand you correctly. Do you mean to say that if a person is very sick and it is a case of emergency, you would turn the
62 prospective patient away because of lack of beds?

THE WITNESS: No, Your Honor. When the patient came to the hospital, he was in such condition. But after two hours, he was answering questions, and he was walking.

THE COURT: You thought it was no longer an emergency; is that it?

THE WITNESS: It was no emergency. In other words, we do that every day with, for instance, children, and we place them in the custody of their mothers or somebody else—in the custody of their relatives. In this case this man did not have any address; but the police were going to take care of him. And then whoever the relative was who was going to take him out, would take care of him.

THE COURT: Proceed, Mr. Davis.

BY MR. DAVIS:

Q Doctor, do I understand you did make some effort to obtain a bed for him in Providence that day? A Yes.

Q What effort did you make, sir? A I notified the night supervisor to that effect, and she did check the book to see if there was any bed available.

Q And she informed you that all the beds were filled? A That's right.

Q If you felt he had made the maximum improvement and there was no emergency, why did you try to
63 find a bed for him? A I did that when the pa-

tient came in. And I said before that when the patient came in, and when the patient left, were two different situations. When he came in, he needed hospitalization, because he couldn't walk; he didn't respond, and he couldn't be checked neurologically. In other words, I could not ascertain if he had any injury or not. But once he reacted, then I was able to check all the reflexes and see if there was any injury to the brain or not.

Q Do I understand you to say you tried to make arrangements for hospitalization elsewhere, meaning at Gallinger? A Gallinger always takes care of patients like him, if they are residents of the District of Columbia.

Q You did have D. C. residence on this man, didn't you?—1625 First Street, Northwest? A They have to be in the District of Columbia for more than two years, I believe.

THE COURT: Isn't Gallinger Hospital a public hospital that takes care of anyone in the District of Columbia?

THE WITNESS: Only residents, Your Honor; and they have to be here for at least two years.

THE COURT: You mean if a person meets with an accident and is in bad condition, and needs immediate treatment, Gallinger won't take him if he is not a
64 resident of the District of Columbia?

THE WITNESS: I believe it is true, Your Honor.

THE COURT: I doubt that very much. You mean to say, then, that if a non-resident is suddenly taken sick in the street, or is run over by an automobile or a street car, he is not entitled to hospitalization?

THE WITNESS: If they are on the Gallinger Hospital grounds, they may take it. But if in another hospital, they would not transfer; they would tell that hospital to keep the patient.

THE COURT: In other words, do I understand you correctly, then, that what you have said is limited to cases that are in another hospital—

THE WITNESS: That's right.

THE COURT: —and that other hospital desires to transfer the case to Gallinger?

THE WITNESS: That is right—transfers.

* * * *

65 BY MR. DAVIS:

Q Was the plaintiff placed under arrest that morning by these officers of No. 5 precinct? A I didn't see him being booked. He was just taken—

Q You didn't go to the precinct. But did the officers say to Mr. Taylor, or to any of his two friends who were there with him, they were placing him under arrest on any certain charge? A The officers took him, and that is about all I know.

THE COURT: Did they tell you on what theory they were taking him?

THE WITNESS: One of the officers made a remark, "Can you see that he is obviously drunk?" And he wanted the whole case dismissed, so everybody could go about their duties or go to bed.

THE COURT: No. You must listen to questions and answer questions. On what theory, for what reason did the officers take custody of the plaintiff?

THE WITNESS: The only statement they said was that he was obviously drunk; and I imagine they took him on that charge.

THE COURT: In other words, they arrested him for being drunk? You so assumed?

THE WITNESS: I assumed that from the comments made.

66 THE COURT: Was he drunk? You, as a doctor, would know better than a police officer.

THE WITNESS: I never did accuse him of that, and I don't think the amount of liquor he took was enough to make anybody drunk. * * *

* * * *

Q There were only two officers there that morning, Doctor? Isn't that true? A Two.

* * * *

Q Can you identify the officer who made this remark, "Can't you see he is obviously drunk?" A I don't think so.

67 Q You can't tell us which one of the two made that statement? A I won't be sure.

Q Did you make any objection to the officers taking Mr. Taylor out on this charge of being obviously drunk? A For the first two hours, up until the time when he was able to walk, and there was no other solution.

Q And then you made no objection to his being taken to the precinct? A I couldn't make any objection.

Q You could as the attending physician, could you not, if you felt he was not drunk? A But what could I do?

Q He was your patient, was he not, at that time? A Yes. But he couldn't be, indefinite.

Q You didn't think he was being taken to No. 5 just to give him a bed, did you?

THE COURT: Mr. Davis, don't argue with the witness.

BY MR. DAVIS:

Q Doctor, at any time during the two-hour period you had Mr. Taylor on the operating table, in the emergency room, did you ever give him any intravenous injection of hypertonic glucose solution?

THE COURT: Mr. Davis, I think this ought to be shortened. The Doctor testified all that he did to the patient, or for the patient. So you have a right to assume that he did nothing else.

MR. DAVIS: Very well, Your Honor.

THE COURT: That is a reasonable inference to draw.

* * * *

69 BY MR. DAVIS:

Q Doctor, is it not the approved practice in the District of Columbia by physicians in this jurisdiction, exercising ordinary care and skill, to require a blood or urine analysis, as a prerequisite to a diagnosis of acute alcoholism, in the case of an unconscious patient?

MR. GALIHER: I object.

THE COURT: On what ground?

MR. GALIHER: There is no claim here that he failed to do these things in the case of an alcoholic patient, or an unconscious patient. This is not one of the issues in this case, Your Honor, the scope of this question that Mr. Davis has just asked.

THE COURT: I suggest you gentlemen come to the bench, because this is a rather important matter and I would like to hear counsel on it.

(At the bench:)

THE COURT: Of course this question is obviously based on the opinion of the Court of Appeals in the case of Central Dispensary and University Hospital against Harbaugh, 84 Appeals D. C. 371, where that question was asked. But on what theory, Mr. Davis, do you claim that it is relevant in this case? After all, the issues of no two cases are the same, really.

* * * *

70 THE COURT: I am more interested in the pre-trial, because the pretrial memorandum supersedes the pleadings.

MR. DAVIS: I will have to refer to the factual statement.

THE COURT: What is that?

MR. DAVIS: If we take the pretrial statement, we will have to take the factual statement.

THE COURT: Yes; that is what I mean. I have that before me.

You see, Mr. Davis, the second paragraph of that statement is negligence claimed for the hospital's failure to admit Taylor as a patient for observation and to X-ray him at that time; also defendant's erroneous diagnosis of intoxication as plaintiff's condition.

This witness testified that he did not diagnose his condition as intoxication, and the record that you have introduced in evidence doesn't show that he was diagnosed as being intoxicated.

Now, on what theory are the urine and blood tests relevant here?

MR. DAVIS: There will be evidence, if the Court please, in line with the complaint which is summarized in the factual statement.

THE COURT: Let us go back to the complaint.
71 Of course the pretrial memorandum—and the factual statement is part of the pretrial memorandum—supersedes the pleadings, and of course if it is narrower than the pleadings, the pretrial memorandum prevails.

MR. DAVIS: Yes, Your Honor. In paragraph 6 of the complaint, which is on the second page.

THE COURT: Well, of course, so far your evidence you yourself introduced negatives the allegation contained in paragraph 6, that there was no diagnosis of the plaintiff's condition as being drunk and he was treated for alcoholism.

I don't want to rule on this question until I clearly understand on what theory you consider it relevant.

MR. DAVIS: We take the position, if the Court please, that since the relationship of physician and patient had been established—

THE COURT: There is no doubt about that. Suppose you come to grips with my question: Why is this particular question relevant?

MR. DAVIS: I think when these officers told this man that "This man is obviously drunk," the Doctor was then under the duty to the patient to say "I think he may have a skull or brain injury."

THE COURT: That is something else. But why is this question relevant?

MR. DAVIS: Because he has a duty, then, to
72 take a blood test or urinalysis.

THE COURT: I am going to allow your question. I don't think it can do any harm.

I don't think there was a duty to do it if he thought the man was not drunk. But you may ask the question anyway.

(Counsel having returned to the trial table:)

THE COURT: Read the question to the witness, please, Mr. Reporter.

THE REPORTER (reading): "Question: Doctor, is it not the approved practice in the District of Columbia by physicians in this jurisdiction, exercising ordinary care and skill, to require a blood or urine analysis, as a prerequisite to a diagnosis of acute alcoholism, in the case of an unconscious patient?"

THE COURT: There was no diagnosis here of acute alcoholism.

MR. DAVIS: No; but there is evidence that the patient was unconscious, if Your Honor please.

THE COURT: Yes; but I am afraid I didn't get the full import of your question the first time. You were asking this witness as to what is an approved practice in connection with the making of a diagnosis of acute alcoholism. I think that question is irrelevant, because there was no diagnosis, either of acute or of any other
73 kind of alcoholism. On the contrary, the witness testified that the patient was not intoxicated and that he didn't diagnose him as being intoxicated.

MR. DAVIS: It is right in line with his last testimony, if Your Honor please, that the officer said—

THE COURT: Oh, the police officer doesn't make a medical diagnosis. I am going to exclude that question.

MR. DAVIS: I submit it was the Doctor's duty then to make the tests.

THE COURT: Not if he didn't make the diagnosis. I am going to exclude the question, as irrelevant.

BY MR. DAVIS:

Q May I ask you this, Doctor?—Did you at any time while the patient was in your custody take a blood specimen for an analysis of alcoholic content? A No.

Q Did you at any time take a specimen of the patient's urine for chemical analysis as to alcoholic content? A No.

MR. DAVIS: That's all, sir.

THE COURT: Did you do that because you didn't think the man was drunk? I mean, did you fail to take those tests because you didn't think the man was drunk?

THE WITNESS: No. I wouldn't see the connection with the injury.

THE COURT: If you thought he might have
74 been drunk, would you have taken one of those tests? Would you have made one of those tests?

THE WITNESS: In my time—that was two or three years ago—it wasn't done.

* * * *

William M. Kolb,

* * * *

BY MR. DAVIS:

Q Will you state your full name to the Court and the jury, please? A Private William M. Kolb.

* * * *

Q Private Kolb, I note you are wearing a uniform
75 and are a member of the Metropolitan Police Department. A A member of the Metropolitan Police Department, assigned to Communications and Records.

Q Are you appearing today in response to a subpoena duces tecum served on your commanding officer to produce certain records of the Communications Division respecting a telephone call from Providence Hospital to No. 5 precinct on the early morning of May 25, 1949? A I am.

Q Do you have that record with you, sir? A I have.

MR. DAVIS: Would you mark this Plaintiff's Exhibit 2 for identification?

(Examining counsel handed the record to counsel for defendants.)

MR. GALIHER: We have no objection.

THE COURT: Are you offering it in evidence?

MR. DAVIS: Yes, Your Honor; I am offering it in evidence at this time.

THE COURT: It may be admitted.

(The police record was marked and received in evidence as Plaintiff's Exhibit No. 2.)

* * * *

76 BY MR. DAVIS:

Q Will you refer to the record, Mr. Kolb, and state what time the call was made, and from what point?

A This is a report received by the Communications on May 25th, 1949, at 2:09 a.m. It was received by the Communications, sent by phone, from Officer Hack at No. 5 precinct. And the nature of the complaint was a report of an injury; location, Providence Hospital. The name of the party concerned was Theodore Taylor. The address, 600 Twentieth Street, Northwest.

This was received, as I say, at 2:09 a.m. It was transmitted to the scout car, 52, at 2:10 a.m. And at 3:54 a.m., the same day, the scout car reported back to the dispatcher and stated that a report would be made.

Q Does that record indicate the names of the two officers on scout car 52? A It does not.

Q You have mentioned the name Jack; will you identify him, Mr. Kolb. A Hack.

* * * *

A Hack is the station clerk at No. 5 precinct. This message was received from Officer Hack by phone.
77 Q From whom? A It was received—Officer Hack phoned this message to the Communications—and it was received by Operator 58 at the Communications Bureau.

Q My question was from whom did Officer Hack, according to that record, receive the original message? A That does not show on this record.

Q Does it show the place from which the original call originated? A It does not.

Q I direct your attention to the heading "Location," Private Kolb, and ask you if that doesn't indicate the location of the origin of the call to Private Hack, the desk sergeant of No. 5. A I could not state that.

Q What is this word here? A Providence Hospital.

* * * *

Q Mr. Kolb, I direct your attention to the rubber stamp on the back of Exhibit No. 2, which reads:

"Broadcast May 25, 2:10 a.m."

Does that indicate that this call was broadcast by the Communications and Records over the radio system to a radio car? A It means it was broadcast to scout car 52 by a dispatcher over the radio at 2:10 a.m.

* * * *

MR. GALIHER: No questions, Your Honor.

MR. BARRY: No questions, Your Honor.

* * * *

Wade G. Baucom,

* * * *

79

Direct Examination

BY MR. DAVIS:

Q Mr. Baucom, will you state your full name, please, to the Court and jury? A Wade G. Baucom.

Q And you are a member of the Metropolitan Police Department? A I am.

Q Attached to what precinct? A No. 5.

Q How long have you been attached to No. 5 precinct? A The thirteenth year, sir.

* * * *

Q Directing your attention to the early morning of May 25, 1949, were you on duty within No. 5 precinct on that date? A I was, sir.

Q And what particular type of duty were you on?—scout car, foot duty, or what? A I was assigned to No. 52 scout car.

Q Who was your partner on that occasion? A Private J. U. Carroll.

Q Is he still on the force, to your knowledge? A He is not, sir.

80 Q Are you appearing, in addition to your individual capacity, in response to a subpoena duces tecum served on Captain Edwards of your precinct to produce the arrest book showing the entries made on May 25, 1949? A I am, sir.

Q Will you turn to that particular date and indicate whether your arrest book shows an arrest of one Theo T. Taylor? A I have that case, sir.

THE COURT: Does it show an arrest of Taylor?

THE WITNESS: Yes, sir.

BY MR. DAVIS:

Q On what charge was he arrested, sir?

MR. GALIHER: I object to that, Your Honor.

THE COURT: Will counsel come to the bench, please?
(At the bench:)

THE COURT: What is the ground of your objection?

MR. GALIHER: This is irrelevant and immaterial and not binding on either of the defendants and could only inflame the jury.

THE COURT: It seems to me it is irrelevant. However, before I make a final ruling, I will hear you, Mr. Davis.

MR. DAVIS: I am offering it for a two-fold purpose, if Your Honor please.

I am offering it to impeach Dr. Salazar, on the
81 basis that he did not keep this patient under observation two and a half hours.

The arrest was—

THE COURT: Your question was, on what charge was he arrested. I am only passing on one question at a time. For that purpose, all you need do is ask him what was the time of the arrest; and I would allow that.

Do you press the question as to the charge on which the arrest was made?

MR. DAVIS: Yes.

THE COURT: On what ground?

MR. DAVIS: In line with the issue of damages in this case. The evidence will show, when the plaintiff takes the stand, that he is employed in this sightseeing business, for which he needs an identification card. And, as a result of the charge of drunkenness he was put to great expense to renew his license.

THE COURT: I understand all that. But how is the Providence Hospital or Dr. Salazar responsible for that?

MR. DAVIS: Because, as I said a moment ago, as the physician in charge of this patient, the Doctor owed a duty to object to the man being taken from the hospital when he was in immediate need of hospitalization.

THE COURT: Objection sustained. The arrest was made by the police. The police have a right to
82 make an arrest of a man whom they deem to be intoxicated. They are not bound by the physician's opinion, even though the physician may be more competent to pass upon a person's intoxication.

I am going to exclude the evidence of the arrest and any damages resulting from the arrest, because there is no evidence so far that the arrest was instigated by anyone connected with the Providence Hospital.

MR. DAVIS: We have the records of the Communications Division in evidence, showing that the call originated at the Providence Hospital.

THE COURT: The Providence Hospital is under a duty to telephone concerning an accident. That doesn't indicate or give rise to an inference that they instigated the arrest.

The mere fact that a citizen telephones to say "There is an injured man here," and the police come around and arrest that injured man, doesn't make the citizen who puts in the telephone call responsible for the arrest, in whole or in part.

MR. DAVIS: No. But I have the further point, if Your Honor please.

THE COURT: Give me all of your points.

MR. DAVIS: That Providence Hospital is not a public place. Drunkenness is only a misdemeanor, and an officer can only make an arrest of a misdemeanor which occurs in his presence.

83 THE COURT: I think you are right. It may be that this arrest was illegal, and I am inclined to think you are right and that the arrest was illegal, because I don't think the emergency room of a hospital is a public place, and intoxication in a private place is not a criminal offense, as I understand the law.

MR. GALIHER: As a matter of fact, I think Mr. Davis had it set aside on that theory.

THE COURT: And you may have a good cause of action for false arrest against the officer who made the arrest, but not against the hospital.

MR. DAVIS: Under a recent adjudication, the officer would be immune, under the doctrine of governmental function.

THE COURT: That may be. But I am not so sure that an officer is not liable for false arrest.

MR. GALIHER: I think the District would not be, but the officer himself would be.

THE COURT: But I don't think the hospital is liable for the wrongful arrest.

MR. DAVIS: I think there was a duty, as this man's physician, to object to his being taken.

THE COURT: No citizen is under a duty to interfere with an officer making an arrest, or to object to an arrest.

I am going to exclude the arrest, and any evidence of damages resulting from the arrest.

* * * *

84 THE COURT: I sustain the objection to the question.

BY MR. DAVIS:

Q Mr. Baucom, without detailing the type of arrest, will you tell us the time of the booking of Mr. Taylor, at No. 5 precinct? A 3:55 a.m. That is May 25, 1949.

Q 3:55 a.m.? A Yes, sir.

Q And as a result of that booking, was he placed in a cell—

THE COURT: No; I am going to exclude all of that, because, as I said at the bench, I am going to exclude the evidence of the arrest, and any damages flowing therefrom, because the hospital is not responsible for it.

BY MR. DAVIS:

Q Mr. Baucom, I believe you have already testified that you were on scout car No. 52 that day? A I was.

Q Did you respond to the call from the Communications and Records Division to proceed to Providence Hospital? A I did, sir.

Q Can you tell us the time you arrived there, you and Officer Carroll? A I could only give you the
85 approximate time.

Q That would be good enough. A Approximately 2:15 a.m.

Q And to what part of the hospital did you go immediately upon your arrival? A To the emergency room.

Q What did you find on arrival there? A I found in the emergency room Mr. Taylor, being treated by Dr. Salazar.

Q Was he sitting in a chair or was he on the operating table at that time? A He was on the operating table.

Q And who else was present in the room with Dr. Salazar? A I don't know, sir. I don't remember.

Q How long was he on the operating table, to your personal knowledge? A I don't remember that either, sir.

Q Where is Providence Hospital with respect to No. 5 precinct? A Three blocks, sir.

THE COURT: Just where is No. 5?

THE WITNESS: Fifth and E, Southeast, Your Honor.

* * * *

86 BY MR. DAVIS:

Q At whose request, if any, Mr. Baucom, did you take Mr. Taylor into custody that morning?

THE COURT: Just a moment. Again you assume a fact. You may ask him whether anybody requested that he take Mr. Taylor in custody.

BY MR. DAVIS:

Q I will reframe that question, Mr. Baucom:

Did anyone request you to take Mr. Taylor in custody that morning? A My memory isn't that good, as to re-

member conversations or requests. I don't remember whether there was a request or whether I saw the need, or what the situation was that led up to that point.

Q Did you have any conversation with the doctor who was treating Mr. Taylor that morning? A I possibly did.

Q Did you at any time in that conversation say that Mr. Taylor was obviously drunk? A I don't recall saying that.

* * * *

87 Q What happened when the doctor finished with Mr. Taylor's emergency treatment? A Mr. Taylor was taken to No. 5 precinct.

Q Did he have to be carried? A He was assisted.

Q What was his physical condition at that time, Mr. Baucom? A Well, he had no control, it seemed, over his muscular movements. He was in a kind of a collapsed condition. He had to be more or less—one of us had him under one arm and the other under the other arm, and he was more or less just assisted out to the scout car.

Q In other words, he couldn't walk under his own power? A I would have been—I don't know. I
88 wouldn't trust—I mean, if I could assist a man in that condition, I wouldn't permit him to try. I will put it that way.

Q Did you have any conversation with Mr. Taylor that morning enroute from Providence Hospital to No. 5? A I had no conversation. I attempted to.

Q What was the nature of his responses? A Mr. Taylor was very incoherent at the time. I could not understand anything he said.

Q Was he able to give you his name? A No.

Q From whom did you get his name? A From a billfold taken from his person.

Q And from that billfold did you get the name from his operator's permit, a registration card or some such

other credentials? A There was identification. I don't recall what card or what type it was.

Q Did you know at that time that Mr. Taylor was a licensed public vehicle chauffeur? A I did not.

Q When you got him to No. 5 precinct, did you make the usual search at the time of booking him and taking from him his personal belongings, including his belt and his necktie? A I didn't, sir.

89 Q Did Officer Carroll, in your presence? A That isn't the duty of the scout car. That is the duty of the station crew, the men that work in the station.

Q But you secured his name and address from his operator's permit? Is that correct? A Yes, or some identification.

Q What? A Or some identification. I have forgotten what card.

Q Some identification that was then on his person? A Yes, sir.

Q And the address on your arrest book was what? A 620 Twentieth Street, Northwest.

Q Did he ever give you an address of 1625 First Street, Northwest? A Not to my knowledge.

* * * *

90 Q Now, did there come a time, according to your arrest book, when Mr. Taylor was released from No. 5 precinct?

* * * *

Q Does your arrest book show that time, Mr. Baucom? A The arrest book doesn't show the time of release. * * *

* * * *

91 BY MR. DAVIS:

Q Mr. Baucom, do you recall how the plaintiff, Mr. Taylor, was transported from Providence Hospital to No. 5 precinct that morning? A In No. 52 scout, sir.

* * * *

THE COURT: You didn't call a patrol wagon?

THE WITNESS: No, sir.

* * * *

Q And that is the same car in which you and Officer Carroll had gone to the hospital? A Yes, sir.

* * * *

92 Q Did both you and Officer Carroll return to the precinct in No. 52 scout car? A To the best of my knowledge, we did not. I have been trying to reconstruct that. It isn't clear in my mind at all.

THE COURT: This was three years ago.

THE WITNESS: Yes, sir—three and a half years ago.

THE COURT: Three and a half years ago.

THE WITNESS: And, Your Honor, I might add that it was a routine case at the time. I had dozens of cases like that over a weekend.

BY MR. DAVIS:

Q Mr. Baucom, do you recall Mr. Taylor's condition on that morning as to intoxication? Was he drunk or not? A He had an odor of alcohol on his breath. His actions were similar to that of a drunk. He had received medical treatment. As a policeman, I had no other alternative than to take the action I did.

Q Was he belligerent that morning at any time? A He was not.

* * * *

93 BY MR. DAVIS:

Q Mr. Baucom, in your experience of some 14 years on the force, have you ever seen an individual with a fractured skull? A I have, sir.

THE COURT: Just a moment. I have told you before, Mr. Davis, that I will not go into the question of the arrest, or I will not permit counsel to go into the question of the arrest.

BY MR. DAVIS:

Q Mr. Baucom, was the only evidence you observed that morning of any intoxication on the part of Mr. Taylor the odor of alcohol on his breath?

THE COURT: No, Mr. Davis, I have ruled that you may not pursue this line of inquiry. You must comply with the ruling of the Court.

MR. DAVIS: I am not directing questions to the arrest now, Your Honor.

THE COURT: I am not going to go into the question as to whether it was a lawful or an unlawful arrest. The responsibility of the hospital ended when the police came in and took charge. And that applies also to the doctor.

* * * *

94

Cross Examination

* * * *

Q Do you recall if there were persons with the injured man, Mr. Taylor, or whom you found were with him? A Yes. There were some people in there that had been with him.

Q And can you tell us if that was one person or more than one? I appreciate you don't know how many. A Well, it was more than one.

Q And were they both men and women? A It was both. I remember one girl; and there were two or three men. I don't recall the exact number.

* * * *

95 Q Can you tell us, Officer Baucom, how long, if you recall, these other persons remained in the emergency room, while you and Officer Carroll were there?

MR. DAVIS: I object to that as immaterial, if your Honor please.

THE COURT: Objection sustained. I don't see the relevancy of all that.

Gentlemen, I am going to confine both sides to the strict issues in this case; and the issues in this case are only whether an erroneous diagnosis was made, negligently—first whether it was erroneous and second whether the error was made negligently—and whether there was an improper release from the hospital of this patient.

MR. GALIHER: Yes, Your Honor. May I state my reason for it?

THE COURT: If you wish to do so, you may come to the bench.

MR. GALIHER: All right, sir.

(At the bench:)

MR. GALIHER: I wish to show, if Your Honor please, that there came a time when these people all left, and the only persons that remained thereafter were the officers.

THE COURT: That has nothing to do with the case.

96 MR. GALIHER: I think it is a fact to show, in addition to their ascertaining where this man lived, that there was no one there to actually help him away.

THE COURT: No; that doesn't make any difference. Even if all these people stayed, the injured man still would have been arrested on the charge of intoxication.

Apparently the Doctor's first statement on the subject, on the witness stand, was erroneous. He said they took him for safe custody. And the officer says that he was arrested, and the arrest book shows he was arrested. I have excluded the ground of the arrest. I don't think the matters concerning which you are interrogating the witness are relevant.

MR. GALIHER: Yes, sir.

(Counsel having returned to the trial table:)

BY MR. GALIHER:

Q Officer, you indicated to Judge Holtzoff a few minutes ago that you had handled this as a routine case, and

indicated that over a weekend you had a number of similar cases. A That is correct, sir.

* * * *

97 Q You arrived, according to the records, at 2:15. A That is approximately the time, sir.

Q Can you tell us, as best you can recall, how long you were there in the emergency room, in the hospital?

A Well, it was quite some time. I would say for over an hour.

Q During the time that you were there, can you tell us what you observed Dr. Salazar do, as far as the patient was concerned? A To the best of my recollection, he was in the act of placing a bandage on the back of his head.

Q Now, can you tell us if there was any change, as far as you can recall—and I appreciate that this was a long time ago—can you tell us if you recall if

98 there was any change in his condition, from the time that you first arrived until the time when you left? A I would say no.

* * * *

Q Can you tell us whether or not during the time that you were there, if you observed Mr. Taylor become ill and vomit? A Not to my recollection.

Q Will you tell us, if you please, if you recall a nurse being in the room while you were there? A I can only assume that there was. There usually is. But I couldn't say that I remember a nurse in that room.

Q Well, Officer Baucom, do you have a very clear recollection about this incident? A I do not.

Q And as you pointed out, it happened approximately three and a half years ago. A Yes, sir.

99 Q And you told us, in your opinion, that this man was intoxicated? A I didn't say that. I said that he acted in a similar manner to an intoxicated person.

There are a lot of injuries that are similar in nature to a person who is intoxicated. We have trouble distinguishing between cerebral palsy or an epileptic fit or several different things that a person goes into that resembles an intoxicated person. They have loss of muscular control, incoherent speech; they are unable to handle themselves properly, to walk unassisted; their faces flush; or they turn pale. They have all the indications of an intoxicated person. And when we find one like that, we usually take them right straight to the hospital to get professional advice.

Q Yes, sir. Now, do you recall at the time that you and Mr. Carroll, your partner, left with Mr. Taylor, whether or not any of the persons that you have described as being in the room, who were friends of Mr. Taylor, whether any of them were still there at the emergency room? A I don't recall whether they left prior to my leaving, or not.

Q Can you tell us, if you please, Officer Baucom, whether or not you made any effort, during the period of time that you were at the hospital, to ascertain the address of Mr. Taylor, where he lived? A I did.

100 Q And can you tell us what efforts you made?

A I attempted to question Mr. Taylor.

* * * *

102

John Underhill Carroll

* * * *

Direct Examination

BY MR. DAVIS:

Q Mr. Carroll, will you state your full name for the record, please? A John Underhill Carroll.

Q Where do you live, sir? A 729 Eleventh Street, Southeast, apartment 1.

* * * *

Q When were you retired from the police force? A August 31, 1950.

Q Were you on duty as a Metropolitan Police Officer on the early morning of May 25, 1949? A I was.

Q And to what precinct were you attached on 103 that day? A I was assigned to No. 5.

Q Was the witness who just preceded you, Officer Wade Baucom, your partner on that morning? A He was.

* * * *

Q About 2:15 a.m. that morning, did you appear at the emergency room of Providence Hospital? A Yes, we did.

Q What did you find on arrival there? A Well, there was quite a bit of confusion. There were quite a few people running around in there. And there was a fellow in there that was on the table there. I believe he was getting his head sewed up.

Q Can you identify anyone in the courtroom as that individual? A Yes; it was the chap sitting there.

Q You are indicating Mr. Theo T. Taylor, the 104 plaintiff? A Yes.

Q Did you know Mr. Taylor prior to that morning? A Not personally, no.

Q Did you know him by sight? A Just by sight, but I didn't know his name.

Q Did you know his occupation, knowing him by sight? A He was, I believe, a sightseeing man.

* * * *

Q How many officials were on duty in the emergency room that morning, Mr. Carroll? A Well, there was a nurse and an intern, I believe. I don't know how many others, if there were any others.

Q But you only recall one nurse and one intern? A That is all I know. I remember seeing a nurse in

there. And there was an intern. I guess he was an intern.

Q Will you tell us whether or not you talked to either the nurse or the intern on arrival at the emergency room?

A Yes. It was customary to speak to them, to find out what the story is.

* * * *

105 Q Will you tell us what conversation you had with the doctor on that morning at the emergency room? A As to what the actual conversation

106 was, that has been a long time ago.

Q Will you give us the substance of it, if you cannot recall the exact words? A No. Undoubtedly it had to do with what had happened to the person who was there, and what was wrong with him.

Q What did the doctor tell you was wrong with him?

A I don't recall what his words were; but I believe the man had a cut in his head that was being sewed up.

Q When you had this conversation with the doctor, was he in the act of sewing up Mr. Taylor at that time, or had that process been finished? A I couldn't tell you that, either. I don't recall.

Q How long were you in the emergency room altogether on that morning? A Well, it was a pretty good while, a rather long while for such a call. As I say, there was quite a few people in there, and we were trying to get the background as to how the man was injured. And we never did get a straight story on it. * * * Some claimed he fell, and others claimed he had been hit. And we couldn't get anything out of him. We couldn't even get his name, or where he lived, or nothing
107 else.

So it finally went on the record, as I wrote the report up, I believe, that there was a fall on public space, I believe it was. We checked and there was no defect in the sidewalk, on B Street.

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Q Were you there all the time until you ultimately left with Mr. Taylor, that is, in the emergency room?

A I believe so.

Q Were you there when he got off the operating table? A I believe I was.

Q Did he get off with or without assistance? A I believe he was assisted. I won't swear to that, because I don't recall.

Q Was anything said to the doctor or by the doctor to you as to the nature or extent of this man's injuries, for which he had finished treating him? A Well, I probably asked him whether he was going to be admitted. Whether I did or I didn't, I believe that I would have or should have.

Q Do you recall what response, if any, the doctor gave you to that question?

* * * *

108 THE WITNESS: I don't actually remember.

But since the fact is that I took the man to No. 5 and placed him on the books, it must have been negative.

* * * *

Q That he was not going to be admitted? A That is right.

* * * *

Q Mr. Carroll, you have mentioned there was quite a confusion and a number of other persons present in the emergency room that morning. Were any of those other persons friends or acquaintances of Mr. Taylor, to your knowledge? A I believe that they were. They had brought him there.

THE COURT: Mr. Davis, may I warn you of one thing? I sustained an objection that you made to one of Mr. Galiher's questions as to the presence of Mr. Taylor's friends. If you ask the question now, that
109 opens the door for Mr. Galiher, and I will have to overrule your objection.

MR. DAVIS: I believe my objection was that Mr. Galiher was assuming a fact not in evidence.

THE COURT: No, no. You objected to the matter as not being relevant, and I sustained your objection, because I thought it was not and I still think so.

I will let you ask this question, if you want to; but that reopens the subject to Mr. Galiher, and your objection to Mr. Galiher's question is no longer good.

I personally don't see the relevancy of it.

MR. DAVIS: Very well. I will abandon that inquiry, if Your Honor please.

BY MR. DAVIS:

Q Mr. Carroll, there did come a time when you and Officer Baucom took Mr. Taylor out of the hospital and to No. 5 precinct? A That is correct.

* * * *

110 Q When he was released in your custody, Mr. Carroll, what was his physical condition? A Well, as I attempt to recall the man, we tried to question him, and we couldn't get anything out of him. We tried to ascertain where he lived or where his brother or some of his relatives, or someone, lived.

THE COURT: The question, Officer, is what was the man's physical condition.

THE WITNESS: A more or less dazed condition, I would say.

BY MR. DAVIS:

Q Did he appear dis-oriented? A I would say so, yes.

Q Knowing him by sight—you have just mentioned his brother—did you know he also had a brother in the District of Columbia? A Not until then. His friends who were there informed me he had a brother.

111 Q You knew at that time, from seeing him on the street previously, that he was a resident of the District of Columbia, did you not? A Well, I believed

he was. I had seen him around there among the sight-seeing men at different times.

Q Was there anything said while you were in the emergency room of Providence Hospital on that morning by the doctor to the effect that this man was not a D. C. resident and therefore not entitled to hospitalization at Gallinger Hospital? A I don't recall it.

Q Mr. Carroll, as a matter of fact the Homicide Squad was eventually called in to investigate the injury, was it not—Detective Couture? A They would have been. I didn't know it until a short while ago, that Couture was the man that the case was assigned to.

In the event of an injury to a person on public space, or an "incidental" as the report is called, the Homicide Squad has to follow it up and make the investigation.

Q Though you didn't know it then, you do know now that Officer Couture did make an independent investigation— A That is correct.

Q — of the Homicide Squad.

112 Aside from this question of lack of orientation and his inability to express himself, what else did you observe about his physical condition? A Well, there was a smell of alcohol on his breath. But I couldn't say as to the content of alcohol that was in the man. It was sufficient that I couldn't turn him loose on the street, not in the shape he was in.

* * * *

Q What was your purpose in taking him to No. 5 precinct, Mr. Carroll? A To lock him up. As I say, the man did have a smell of alcohol on his breath. He wasn't capable of taking care of himself, and there was no one there of kin to him that could take care of him. So he had to be taken care of. He had to be placed in custody.

Q You said his friends were there in the hospital at the time. Couldn't one of them have taken care of him?

THE COURT: Don't argue with the witness, please.

113 This is your witness, and this is direct examination, and he is not a hostile or adverse witness.

* * * *

BY MR. DAVIS:

Q Mr. Carroll, at that time how long had you been on the force? A I was appointed February 1st of 1946, and that was May of 1949.

Q Approximately three years. A Approximately, yes, sir.

Q In that period did you limit your release of persons suspected of intoxication to relatives, or did you turn them over to friends if the person's friends were available?

MR. GALIHER (having arisen to object): I don't think I have any objection, Your Honor.

THE COURT: I am going to exclude this on the Court's own motion, as being absolutely irrelevant. You know, the Court of its own motion, doesn't exclude evidence that is incompetent, if it is relevant. But when it comes to relevancy, I think it is the Court's duty to confine the testimony within proper bounds. So I am going to exclude this as being absolutely irrelevant.

* * * *

114 Q Mr. Carroll, did the doctor whom you observed treating Mr. Taylor that morning, make any objection to the patient leaving the hospital in your custody that morning?

MR. GALIHER: Objection.

THE COURT: Objection sustained. The doctor admitted he didn't make any objection. Why repeat? If there were any dispute over it, I would allow the question.

* * * *

Cross Examination

BY MR. GALIHER:

Q Officer Carroll, were you able to ascertain this

man's address? A I believe when we got him to the precinct, he had a card on him with his address.

Q I meant in the emergency room. Were you able to ascertain his address at that time? A I don't recall. I don't believe so, no.

Q And were any of these people you have mentioned as being there able to give you his address? A No one seemed, as I recall, to know, to be quite sure where he lived.

Q And did these persons stay there until the time that you took him away? A I believe one of them
115 left to get his brother; I am not sure, but I believe he did.

* * * *

Lionel Couture

* * * *

Direct Examination

BY MR. DAVIS:

Q Mr. Couture, will you state your full name for the record, please? A Lionel Couture.

116 Q What is your occupation? A I am detective sergeant attached to the Homicide Squad, Metropolitan Police Department.

Q How long have you been on the Homicide Squad?

A A trifle over four years—about four and a half years.

Q Were you on duty with that squad in May of 1949?

A I was.

Q Was there a matter concerning an injury to one Theo T. Taylor referred to you for investigation— A Yes, sir.

Q —on the morning of May 25, 1949? A It was.

Q Will you tell us from what point your investigation commenced? A Well, I believe it commenced at Mount Alto Hospital.

Q And that was on what date? A Well, I do not have any actual dates. I made a complete report of this affair, and it was filed in the office of the Homicide Squad.

And after a year and a day, them reports are thrown out. That is just for our own information. And after a year and a day, the report was evidently thrown out. So I don't have the exact dates, except I have my notebook, in which I made a few notes.

Q You have your original notes concerning this
117 matter, do you, sir? A Yes, I do.

Q And this rule of a year and a day is the rule under the District law, because no homicide did result, as the result of this particular injury? A That is right.

Q Will you refer to your original notes, Mr. Couture, and tell us briefly the nature of your investigation and the facts within your personal knowledge?

THE COURT: Just a moment. What is the relevancy of all this line of testimony? What are you trying to show by this witness?

MR. DAVIS: I expect to show by this witness, if the Court please, that he visited the location, 145 B Street—

THE COURT: I think the Court will take judicial notice of that, Mr. Davis. Anyway, I don't see the relevancy of that.

MR. DAVIS: He ascertained the plaintiff was not a participant in this affray, and was as a matter of fact the Good Samaritan trying to act as a peacemaker.

THE COURT: I don't see that that has any relevancy to any of the issues of this case. Is there anything else you wish to show by this witness?

* * * *

118 THE COURT: The Court has asked you a question, Mr. Davis. Is there anything else you expect to show by this witness?

MR. DAVIS: I haven't seen his original notes, Your Honor.

THE COURT: I am asking you what you want to show by this witness. You have told me some things. Have you told me everything you wish to show by this witness?

MR. DAVIS: I want to show how this plaintiff became injured, in the first place.

THE COURT: I don't think that is material. I think this case starts at the time when the plaintiff arrived at Providence Hospital. You are charging negligence, first, in the failure of the hospital to admit Taylor as a patient for observation and to X-ray him, second, erroneous diagnosis of intoxication.

Well now, these matters concerning which you inquire of this witness are irrelevant. We have to try the charges that you make against the hospital and the doctor.

MR. DAVIS: May I ask Officer Couture this question, if the Court please?—

BY MR. DAVIS:

Q In the course of your investigation, Mr. Couture, did you interview one Angel E. Salazar, a doctor
119 of Providence Hospital? A I do not believe I have. No, sir; I know I did not.

Q You did not interview him? A No, sir. I do not have his name on my notes.

* * * *

120 *John E. Varrella*

* * * *

Direct Examination

BY MR. DAVIS:

Q Mr. Varrella, will you state your name for the record? A John E. Varrella.

Q Where do you live, Mr. Varrella? A 1413 Webster Street, Northwest.

Q And what is your occupation? A A lieutenant, personnel officer, D. C. Fire Department.

Q And you are stationed, I believe, at Fire Department Headquarters, at McMillan Park? A That is correct, sir.

Q How long have you been a member of the Fire Department? A Since 1939, June 1.

Q Do you know the plaintiff in this action, Mr. Theo T. Taylor? A Yes, sir.

Q Directing your attention to the early morning of May 25, 1949, did you have occasion to see Mr. Taylor on that morning? A Yes, sir.

Q Where did you see him first on that morning? A I believe it was at the Neptune Grill, the 100 block of B Street, Southeast.

Q Can you fix the time that you first saw him there? A Approximately 1 a. m.

Q Where next did you see him that morning? A In front of the Neptune Grill, approximately 15 minutes later.

Q Had anything happened from the time you first saw him until the time you saw him secondly? A There was a scuffle out front.

Q As a result of that scuffle, what happened to Mr. Taylor? A He either fell or was pushed, and struck his head on the sidewalk.

Q As the result of him falling on the sidewalk, can you tell us anything as to his physical condition at that time? A Well, I think he—at the time his head hit the sidewalk, he was completely unconscious.

Q Completely unconscious? A Yes, sir.

122 Q What happened to him from that point on?

A I believe he was taken to the hospital by two of the bystanders.

Q Which hospital? A Providence.

Q Immediately after that, what did you do with reference to anyone else in Mr. Taylor's party, at the Neptune

Grill? A I took Mr. Taylor's girl friend—there were two girls in the party, and one of the girl's brother—home. There were three.

Q One of the girls was a married woman, and you took her and her husband— A That is right.

Q —and Mr. Taylor's friend home? A Right.

* * * *

Q After taking these people home, what did you do then, Mr. Varrella? A The young lady and I went to the hospital to ascertain the condition of Mr. Taylor.

Q Which hospital was that? A Providence.

123 Q And on arrival there, did you see Mr. Taylor? A Yes, sir.

Q Where was he at that time? In what part of the hospital? A He was stretched out on the table in the emergency room.

Q What was his condition then? A Well, I would say he was semi-conscious and very incoherent.

Q And who else was present in the emergency room at that time, aside from you and Mr. Taylor's young friend and himself and the doctor? A I believe there was a nurse and another intern, and several uniformed policemen.

* * * *

Q Did you have any conversation with the doctor who was then treating Mr. Taylor? A Yes, sir, I did.

Q Will you state what that conversation was? A I asked the doctor if it was possible that the head injury could cause Mr. Taylor to have the same symptoms as a drunk. And he agreed with me and said it was
124 quite possible.

I then suggested that I thought that Mr. Taylor should remain in the hospital overnight, for examination as to possible chance of concussion or fractured skull.

And then either the young lady or the nurse interposed and told me it was none of my affair, and I should keep out of it.

And that was about it.

* * * *

Cross Examination

* * * *

125 Q On this particular evening, had you been with him or seen him prior to meeting him at the Neptune Room? A No. I saw him in the Neptune Room.

Q Do you have any idea what he had to drink on that evening?

MR. DAVIS: If the Court please, so the record may be straight, and there may be no confusion, there are two places—

THE COURT: Just a moment, please. If you wish to note an objection, say so; but make no statements in open court.

MR. DAVIS: I object to Mr. Galiher's characterization of "Neptune Room." That happens to be a cocktail lounge in the Balkan—

THE COURT: Now, just a moment. I didn't hear Mr. Galiher characterize the Neptune Room—bc-
126 sides which, if you object to a question, you may only object to it on the ground that the matter is not legally admissible.

MR. DAVIS: To avoid the possibility—

THE COURT: Just a moment.

Will the reporter please read the question.

MR. GALIHER: I think Mr. Davis is right, Your Honor, and I think I should admit it. I did, I think, characterize it as the "Neptune Room," and I was in error. I should refer to it as the "Neptune Grill."

THE COURT: Oh, that doesn't make any difference. Is that your only objection?

MR. DAVIS: Yes, Your Honor. One is an alcoholic beverage place, and the other is a restaurant.

THE COURT: Oh, I think that is trivial.

* * * *

Q When you referred to the Neptune, it was a restaurant in the 100 block of B Street, right opposite
127 the Library of Congress, was it not, Mr. Varrella?

A Yes, sir.

Q And when you referred to this scuffle, you meant it was also in that block, the 100 block, out in front of this restaurant? A That is correct, sir.

Q And did you actually see Mr. Taylor at the time he fell? A I saw him as he was falling. Naturally he wasn't involved in the principal altercation.

* * * *

Q Did you observe whether or not anyone struck him over the head? A I didn't see anyone strike him over the head.

Q And the only contact you had, you saw the scuffling and saw him fall to the sidewalk; and he hit his head on the sidewalk or on the curb, was it? A The sidewalk, sir—the base of his skull.

Q Had you been close to him prior to that occasion? A How much prior?

Q Well, you told us you had seen him for the first time, as I recall, a few minutes before that. A In the restaurant.

128 Q In the restaurant. Now, can you tell us on that occasion if he was drinking—in other words, if he had anything on the table in front of him that you saw? A I have no knowledge of it, sir.

* * * *

Q From the time you first saw him until the injury occurred, how much time elapsed, Mr. Varrella? A Approximately 15 minutes.

Q And in this scuffle that you are talking about, how many persons were there? A Two, in the original scuffle.

Q Yes, sir. Was there a second one? A I believe Mr. Taylor was serving as a peacemaker.

Q All right. You said in the first one. Were there two scuffles? A Two. I only saw two.

Q Now, then, you have described a person as Mr. Taylor's girl friend. Do you know her by name? A I believe her name was Dorothy.

Q And do you know Dorothy's last name? A I believe it was Parrish.

Q And I believe you mentioned there was
129 another person also there. Can you tell us who that person was: I am referring now to outside of the Neptune Restaurant. A Referring to Mr. Taylor's party?

* * * *

Q After Mr. Taylor was injured, as I understand, you drove Mr. Taylor's friends home? A The remainder of his party, yes.

Q And you mean Mr. and Mrs. Melvin? A Right.

Q And where did they live, Mr. Varrella? A I believe it was West Virginia Avenue, Southeast. I am not sure.

Q And then what about Miss Parrish? A She and I went to the hospital together.

Q How much time elapsed from the time that he was injured and until you got over to the hospital? A About 45 minutes, I would say, sir.

Q And during that time, of course, you have no way of knowing what was done to Mr. Taylor at the hospital? A No, sir.

Q And when you reached the scene, you have
130 mentioned a group of persons as being in the room. And when I say "the scene," I mean the emergency room. A That is right, sir.

Q At that time can you tell us if Mr. Taylor's head was sewn up? A I believe it was either sewn up, had

been sewn up, and the doctor was still attending to his head. He had bandaged it.

Q How long were you in the emergency room from the time you arrived until the time you left? A Approximately 15 or 20 minutes.

Q Well, isn't it a fact, Mr. Varrella, if you were there 15 or 20 minutes, that it was longer than 45 minutes after the accident before you arrived at the hospital? A I don't know the exact time, sir.

Q It was some time ago and you are vague about that? A Between 2 and 4, I mean.

Q Yes, sir. Now, the police officers were in the room when you arrived? A Yes, sir.

Q And when Miss Parrish arrived? A Yes, sir.

Q Were you there when an effort was made to find out where Mr. Taylor lived? A I don't recall, sir.

131 Q Do you recall any inquiry being made by the doctor or by the nurse or by the police officers as to where Mr. Taylor resided? A I believe they asked me if I knew his permanent address, and I did not.

Q Were you there when the doctor checked up and found out that there were no beds available at the hospital?

* * * *

THE WITNESS: I have no knowledge of that, sir.

BY MR. GALIHER:

Q Were you there when an effort was made to
132 check on addresses, that Mr. Taylor was supposed to live at, or had lived at? A I was asked if I knew where he lived, and that is all.

Q And who asked you that? A I believe it was the young lady, the nurse.

Q And what did you tell her when you were asked that? A I think I told her I didn't know his permanent address; that he was a commuter back and forth from the South.

Q Was any other information given while you were in the emergency room, or the first-aid room, with respect to his address, other than you thought that he commuted back and forth from the South? A Right.

Q That was the best information that was given as far as you can recall with respect to where he lived?

A That was the only information I gave. I have no knowledge of any information that was given by anyone else.

Q What about Miss Parrish, Mr. Taylor's friend? Was she asked if she knew where he lived? A Someone spoke to her over to the side; but I have no knowledge of what she said.

Q Do you recall if she was able, without telling us or trying to tell us what she said, do you recall if she
133 knew where he lived? A I do not remember that.

Q As far as you know, Mr. Varrella, isn't it a fact that no one was able to find out, during the 15 minutes you say you were in the emergency room, where he lived? A I believe that is correct, sir, because someone mentioned his brother, about getting his brother, that he may know definitely where he permanently resided.

Q But did anybody know where to reach his brother? A I think Mr. Clark knew where his brother resided.

Q But nobody connected with the hospital had been given information concerning his brother that you can recall? A I have no knowledge of that, sir.

Q And did the police officers who were there ask you concerning if you knew where he lived, or where he stayed? A I believe they did, sir.

Q And you told them that all you knew was that he commuted back and forth from the South? A That is right, sir.

Q Do you recall what time it was that you left, Mr. Varrella? A It was three and a half years ago. About quarter of 3, I imagine. Between 2 and 3, I would imagine.

Q Did you leave before Mr. Taylor left? A No; he left before me.

134 Q Did you ever offer to take him? A Out of the hospital?

Q Yes, sir, when you realized the officers were taking him. A He was in the custody of the officers.

Q Did you ever suggest to the officers or to anyone that you be allowed to take him? A No, I did not. I wanted him to stay there.

Q Did Miss Parrish at any time make the suggestion that she would like to take him? A Not to my knowledge.

Q Was Mr. Clark there at the time he left? A Yes, sir.

Q Was anyone else left there, other than the—in other words, I have reference to other than the officers and the intern, or the doctor, and the nurse, whom you have described—you three persons. A As I remember it, we all left in a group, with the police leading the way, with Mr. Taylor between them.

Q While you were there, Mr. Varrella, did you notice Mr. Taylor become ill? In other words, did there come a time when he vomited? A Well, he was in front of me, and I didn't notice that. But I did know that he was very incoherent and semi-conscious and couldn't make sense of what he was saying or trying to say.

135 Q Did there come a time when he left the table that he was on, and went over to a place where he relieved himself or became ill? A I believe he was lifted off the table and taken over to a corner. I don't know exactly. I don't exactly remember. There was a little confusion.

* * * *

Q Do you have any idea how much time elapsed from the time you left in front of the Neptune Restaurant on B Street, until when you finally left the hospital? A As

I said before, I believe it was approximately 45 minutes to an hour. I couldn't set it for you.

* * * *

136 Q Where did you go when the party you have described left the hospital? A After we left the hospital?

Q Yes. A I believe, if I remember correctly, we went to the vicinity of Fourth and East Capitol, to pick up Mr. Taylor's brother.

Q You didn't go with the police officers, in other words? A No, sir.

* * * *

137 Q Did you notice any change, after Mr. Taylor went over to the corner of the romo, as you indicated? A Well, speaking as—

Q When he got back? A Speaking as a layman, I would say he was in bad shape, semi-conscious and, as I said before, very incoherent.

* * * *

Redirect Examination

BY MR. DAVIS:

Q Mr. Varrella, whose car did you use to drive Mr. and Mrs. Melvin, and Miss Parrish, home? A It
138 was my car.

Q And you came back to the hospital in your own car? A Yes, sir.

Q When you used the expression, as to your acquaintance with Taylor, that you knew he commuted back and forth from the South, what did you mean by that? A I meant, to the best of my knowledge, he stayed down South in the winter time and worked here as a guide in the summer.

Q In other words, he spent about half a year in each place? A Yes, sir.

Q And for the half of a year he was in Washington, he would have a Washington address. Is that right?

A I believe so.

* * * *

139

John C. Clark

* * * *

Direct Examination

BY MR. DAVIS:

Q Mr. Clark will you state your full name for the Court and jury, please? A John C. Clark.

Q Where do you live, sir? A 320 North Carolina Avenue, Southeast.

Q What is your occupation, sir? A Tile setter.

Q And by whom are you employed? A Peter Bradley.

Q Do you know the plaintiff in this action, Mr. Theo T. Taylor? A Yes, I do.

Q How long have you known him, sir? A Approximately 20 years.

Q Directing your attention now to the early morning of May 25, 1949, did you have occasion to see Mr. Taylor that morning? A Yes, I did.

Q Where did you first see him, and about what time? A I saw Mr. Taylor in the restaurant.

Q Which restaurant was that, sir. A The Neptune Restaurant, on B Street.

Q That is First and B Street, Southeast? A That is right.

Q Was he alone or with someone? A I was with someone.

Q How many were in his immediate party?

* * * *

A In Mr. Taylor's party I think there were four.

Q And did I ask you to fix the time when you first

saw him at the restaurant? A About 1:15, it was.

Q Did you see him a second time that morning? A Yes.

Q Where was that, sir? A He came back and talked to us at the table.

Q Did anything unusual happen thereafter as he left the restaurant? A Well, there was a commotion outside when he left the restaurant.

* * * *

141 Q As a result of this injury that is within your personal knowledge, can you state whether or not Mr. Taylor was conscious or unconscious? A He was unconscious.

Q What if anything did you do to assist him? A I had to carry him.

Q You carried him from the place where you found him? A From where I found him to his own automobile, and from there to the hospital.

Q And did you drive his car? A I drove his car, yes.

Q And was anyone with you at that time? A No one at all.

Q What did you have to do to get Mr. Taylor
142 into the hospital when you arrived there? A I had to ring the emergency bell and carry him into the dispensary room myself.

Q You carried him in your arms, or on your back? A On my shoulder.

Q And through what door of the hospital was he admitted, to your knowledge? A Second and D Street.

* * * *

Q Did you remain in the emergency room after he was placed on the operating table? A Yes, I did.

* * * *

Q And who else was in the emergency room at that

time? A There were two interns and a nurse there.

Q Two interns and a nurse? A That is right.

Q At any time did you observe one of these interns either suturing or patching Mr. Taylor's head? A Oh, yes.

143 Q Did you have any conversation with that intern? A Yes; I had a conversation with both of them, and the nurse, too.

Q Will you state what conversation you had with the intern who actually treated Mr. Taylor? A Well, they had to ask me his name, and all I knew was his last name at the time. All I knew was a nickname they used to call him, Teddy. And they asked about his address, and I couldn't tell that. But I could tell them approximately where he lived; that was all—and the neighborhood.

So he couldn't answer his own name at the time, and they had to put him up on this table to work on him; and I had to hold him to keep him from rolling off.

* * * *

Q Tell us all of the conversation you had with the intern who actually treated Mr. Taylor. A Well, about the seriousness of the cut on the back of his head.

THE COURT: Can tell us what he said to you and what you said to him?

THE WITNESS: That was later on, when the
144 police came in and wanted to take him out of the hospital. At the time, Mr. Taylor couldn't tell anything at all.

THE COURT: No. Tell us what the intern said to you and you said to the intern.

THE WITNESS: He said he was hit pretty hard, or something, and he had asked me, in other words, about how he was hit, and things like that. And at the time I had to hold him the whole time they were putting stitches in.

THE COURT: Suppose you confine yourself to answering questions. The question asked by counsel of you was the conversation you had with the intern, that is, what did the intern say to you and what did you say to him?

Have you told us all he said to you?

THE WITNESS: Not all of it, no.

THE COURT: Was there anything else?

THE WITNESS: They wanted to turn him over to the police department for being drunk, and I told him, I said, "That man isn't drunk."

THE COURT: When you say "they," who is "they"?

THE WITNESS: The two interns and the nurse—the head nurse there.

THE COURT: Who said what?

THE WITNESS: Well, they wanted to turn him over, and I didn't want to see him turned over to them.

THE COURT: You have got to tell us who
145 made any statement. Was it the nurse or was it the intern?

THE WITNESS: It was the nurse.

THE COURT: And what did the nurse say?

THE WITNESS: The nurse said that he was drunk and said that he would be all right after they had fixed him up.

THE COURT: Who said anything about turning him over to the police department? Was it also the nurse?

THE WITNESS: The nurse and the little black-haired doctor that was there.

BY MR. DAVIS:

Q Can you identify any one of the doctors in court today? A Yes—the gentleman with the red necktie on.

Q You have pointed out the gentleman at the right end of the defense counsel table? A That is right.

Q Tell us what further conversation you had with that gentleman, and what you said in response to it. A Well, after they had finished working on him, he asked

to go to the lavatory. They had him sitting on a chair, then, and I was holding him on the chair to keep him up, in his balance. So I had to even carry him out to the lavatory.

And in the meantime Mr. Varrella had dropped down to the hospital, and he was talking to the nurse
146 and to the other intern that was there.

* * * *

Q Just what conversation was further had with you and the doctor you have just identified? A Well, I went to this doctor over here and asked him was he going to turn him over to the police. And he kind of gave me a halfway answer, that that is the only thing that he could do.

I said, "Well, that man can't even tell you his own name."

I said, "There is something else wrong with him."

And we were trying to get the hospital to keep him there all night—that there was something else definitely wrong with him.

MR. GALIHER: I object and ask that that go out.

THE COURT: Objection sustained. That is a conclusion.

BY MR. DAVIS:

Q How long were you at the hospital on this morning altogether, Mr. Clark? A I imagine at least an hour or an hour and a half.

Q Were you there when the police actually took
147 Mr. Taylor out of the hospital? A Yes, sir; I was right there.

Q During the entire time that you were there, was this doctor you have just identified also in your presence in the emergency room? A Yes, he was around.

Q At any time did you hear that doctor attempt to get a bed for Mr. Taylor in Providence Hospital? A No.

MR. GALIHER: I object to that, Your Honor.

THE COURT: Objection sustained.

MR. DAVIS: That completely negatives the doctor's testimony on that point, if the Court please.

THE COURT: The doctor's testimony was that he made an inquiry of the night supervisor and was informed by the night supervisor that no bed was available.

BY MR. DAVIS:

Q Was either you or Mr. Varrella informed that morning by either the nurse or the two interns in the emergency room that there was no bed available? A No.

MR. DAVIS: You may cross examine.

Cross Examination

BY MR. GALIHER:

Q Mr. Clark, you have told us that you have
148 known Mr. Taylor for 20 years. A That is right.

Q And what has been the nature of your acquaintanceship over the 20 years? A Just a casual acquaintance, of being around the neighborhood.

Q And being around what neighborhood? A Well, around the top of Capitol Hill, as we called it—around B Street, between First and Fourth. And I have lived in that neighborhood since 1911.

Q And where did you generally see Mr. Taylor on the occasions of your seeing him, over this 20-year period? A Well, I have seen him on B Street most of the time, and around the restaurant there eating. I have played pool with him, sociable games. I knew him casually. That was all. He used to park his car with me downtown when I ran a gasoline station downtown.

Q And you never knew his first name? A I never knew his first name. I knew his nickname. That was all.

Q And you never knew where he lived? A Exactly. I thought it was approximately, I thought, somewhere

along East Capitol Street. I knew he was in the sight-seeing business, and there were tourist homes over there, and I connected him over there. That was all. I knew about where he lived.

149 Q After he was injured, who decided how he was going to be taken to the hospital, and who decided to take him to the hospital? A I did.

Q You did? A Yes.

Q Why didn't his friends take him? A Because he had no friends—

MR. DAVIS: I object to that. How would he know, if the Court please, what was in the minds of some friends.

THE COURT: Objection sustained.

BY MR. GALIHER:

Q You observed that he was with some people, did you not? A That is right.

Q Before the trouble started? A Yes.

Q What happened to these people, after he was injured? A I don't know. I didn't see them. I didn't pay any attention to them. They hadn't come out of the restaurant.

* * * *

BY MR. GALIHER:

Q Were you the only one there to render assistance to him after he had his fall on the sidewalk?
150

A No; there was quite a few people there, but wouldn't anybody touch him.

Q You were the only one? A That is right.

Q And you picked him up and took him to the hospital? A That is right.

Q And you drove his car? A That is right.

Q How did you find out where his car was located?
A I knew his car. I knew his car from the way he used to park it with me down at the gasoline station. I recognized it there at the curb.

Q You saw it sitting there and recognized it? A That is right.

Q And then you took the keys out of his pocket? A That is right, out of his coat pocket.

Q And drove from that point, after putting him into the car, to the hospital? A That is right.

Q And I believe you mentioned no one else went along with you at the time? A No one at all.

Q After you got into the emergency room, you
151 told us that a doctor and nurse arrived? A Yes.

Q Or were there; I have forgotten. Now, how long afterwards did anyone else arrive? A Well, it took about five minutes or so before the nurse answered the bell, the emergency bell; and I guess the doctor came down to the dispensary room about ten minutes after that.

It was about ten minutes after that—I guess it was at least a half an hour—when the police came in afterwards. It was approximately about half an hour.

And Mr. Varrella came in there at the time.

Q How long after your arrival did Mr. Varella get there? A I had been there a good half hour.

Q Now, when did the police arrive with respect to when Mr. Varrella arrived? A I think the police came first, and Mr. Varrella came in right after that. I think that was the way they came.

Q Subsequent to that time, did anyone else come into the room, while you were there? A Oh, just the nurse and the two interns that were there.

Q Was any friend of Mr. Taylor's there during
152 this period? A None that I know of.

Q What about Miss Parrish, or a young lady? Was she there during any of the time you were there? A I believe there was a young lady came in and sat down in the outer room, was sitting down on the bench in the outer room. Just who it was, I don't know.

Q Did this young lady at any time come into the room where Mr. Taylor was? A Not in the dispensary

room, no. They came in the outer room, where Mr. Taylor went out in that room to get out the door we had to go out.

Q And when you say "they," you mean this lady and Mr. Varrella? A That is right.

Q Did Mr. Varrella ever come into the inner room you have described? A Yes.

Q But the young lady didn't? A No; I don't believe she came into the dispensary room.

Q How long, from that point on, was it until Mr. Taylor left? A I would say approximately 25 minutes or so.

Q How long would you say you were there altogether, Mr. Clark? A Well, I would say from 153 1:30 until at least 2:30 or 20 minutes to 3. It may have been quarter to 3 in the morning.

Q You are describing now a little over an hour? A It was a little over an hour in the hospital, I imagine.

Q Isn't it a fact, Mr. Clark, it was actually closer to two hours? A Well, it could have been. It was quite a long time.

Q And did you observe what the doctor did who treated Mr. Taylor? A Yes, I did.

Q Did you leave the room during any of the period? A No.

Q And can you tell us, please, what the doctor did? A Well, the doctor shaved the back of his head, shaved the hair off—

THE COURT: Is there any controversy, gentlemen, as to just what the doctor did? Is there going to be any dispute over that, Mr. Davis?

MR. DAVIS: There will be on one item, Your Honor.

THE COURT: What is the item?

MR. DAVIS: I matter I intend to interrogate this witness on, which I overlooked.

154 THE COURT: The doctor testified that he put in four sutures, I think he said.

MR. GALIHER: Yes, sir.

THE COURT: And he enumerated the preliminary work that was necessary.

Is there any dispute over that? If there isn't, I don't think it is necessary to go into that.

MR. DAVIS: There is no doubt about the insertion of the sutures, and the cleansing, and the stitching of the head. But there is a doubt and a dispute about the so-called preliminaries.

THE COURT: Well, I think those become immaterial. Do you dispute that the suturing was properly done?

MR. DAVIS: Oh, No. I dispute that his blood pressure was taken; that his temperature was taken; that his pulse was taken.

THE COURT: Oh, when I said "preliminaries," I meant the preparation for inserting the sutures. There is no doubt about that?

MR. DAVIS: Oh, no.

THE COURT: Then you don't need to go into that.

* * * *

159 Q Do you tell us, sir, you were in the emergency room the entire time? A That is right.

Q When Mr. Taylor first came in, he was put on a table? Is that correct, sir? A That is right.

Q You mentioned that there was a nurse, you mentioned that there was a doctor or an intern and you mentioned another man being there? A That is right.

Q Do you know if that other person could have been an orderly? A He probably could. I imagine he was. He had on a white uniform and was a blond headed young fellow. This fellow over here I understood was the doctor—over here (indicating).

Q Yes, sir. A He was the doctor. I imagine the other one was only an orderly.

Q Was the other man there only during part of the time? A No. He was there the entire time.

Q But this is the man who undertook and did treat Mr. Taylor? A The other man and I supported him on the table.

Q But this gentleman over here is the only one who gave treatment to him—as far as the two men are concerned? A Well, the nurse was there, too, doing
161 things the doctor needed.

Q What did you observe that was done to Mr. Taylor when the doctor arrived? A I believe, if I am not mistaken, the orderly shaved his head, the hair around the cut; and then they cleansed it, and this man put the stitches in.

Q Did you observe any antiseptic applied? A No, there wasn't, that I know of.

Q Pardon me? A No.

Q Did you observe the doctor examine the wound? A Oh, yes.

Q Did you observe him feel the wound? A Well, yes.

Q And did you observe what, if anything, the nurse did, Mr. Clark? A The nurse looked at it, yes, sir. I couldn't say that she touched it or felt it or anything like that.

Q And did she look at it before the doctor came in the room? A Oh, yes; she looked at it before he came into the dispensary.

Q Yes. And did this nurse also take Mr. Taylor's temperature? A No, not that I know of.

162 Q Did you notice whether or not she felt his pulse? A I think she felt his pulse, when he was sitting on the chair, before I put him up on the table.

Q That was before the doctor arrived? A That is right.

Q She talked to you? A That is right.

Q She looked at Mr. Taylor, examined him, did certain things which you can't now recall? A That is right.

Q And then she called the doctor, or there came a time thereafter when the doctor arrived? A Well, the doctor arrived. I don't know who called the doctor. He was supposed to be on his way downstairs. I imagine he was upstairs.

Q In a very short interval, he did arrive? A In about five or six minutes, yes, sir.

Q And then did the doctor take over the case when he arrived? A I guess he did.

Q And did these three people then continue to work on Mr. Taylor? A Yes.

* * * *

163 BY MR. GALIHER:

Q Mr. Clark, do you recall a time in the emergency room when Dr. Salazar—the gentleman over here that you have been describing as being there—told the nurse that he would like to admit Mr. Taylor to the hospital? A No; I didn't hear that at all.

Q Do you recall that the nurse thereafter checked and reported to the doctor that there were no beds
164 available in the hospital? A I didn't hear that at all. The nurse herself in her attitude towards the whole case—

THE COURT: No; just a moment; you must confine yourself to answering questions.

BY MR. GALIHER:

Q How large a room was that that you were in, Mr. Clark? A I imagine about 20 by 20.

Q And you didn't hear everything that went on during the time you were there, did you? A I could have heard everything that went on in that room.

Q You could hear everything that went on in that room? A I could have heard everything that went on in that room?

Q Did all of the conversation that took place take place right where you were standing, or seated? A No.

Q And from time to time different conversations went on in different parts of the room? A That is right.

Q And you told Mr. Davis that there was a great deal of confusion there, didn't you? A No; I never
165 told him there was any confusion there at all.

Q Didn't you say there was a lot of coming and going, and a number of people there, in your direct examination? A No.

Q But you say that you heard everything that went on in that room, everything that anybody said during the time that you were there? A I could have heard anything that went on in that dispensary room, yes, sir.

Q Do you recall that one or both of the police officers told Dr. Salazar that they had been there long enough and they wanted to take Mr. Taylor away from the hospital, some time before they did? A No.

Q Isn't it a fact, Mr. Clark, that on several occasions prior to his leaving with the police officers, they indicated that they wanted to take him; and Dr. Salazar would not release him? A No. All the time we were trying to keep him, to have him admitted to the hospital.

Q Isn't it a fact that some time before Mr.
166 Taylor finally left the hospital, that the police officers indicated that they wanted to take him? A They weren't over anxious to take him.

Q I didn't ask you that, sir. Isn't it a fact that considerably before they took him, they indicated that they wanted to take him with them? A They indicated they would take him, yes.

Q And that was quite some time before they finally left, was it not? A I imagine around about 10 or 15 minutes.

Q And why didn't they take him at the time they indicated first that they wanted to take him? A Because he asked, in an indirect way, to go to the lavatory, and that was outside of the dispensary room; and I took him to the lavatory outside, myself, while they waited.

Q Mr. Taylor asked to go to the lavatory? A That is right. He indicated he wanted to go to the lavatory.

Q And you assisted him to the lavatory? A That is right.

Q And is that when he became ill? A No.

Q How far did you have to go with Mr. Taylor? A From here to the end of the courtroom.

Q And he had no difficulty going to the lavatory,
167 with your assistance? A Oh, I had to hold him.

Q But he walked— A On his two feet.

Q —with your assistance, did he not? A With my arm around him holding him, yes, sir.

Q And before that, he told you he wanted to go to the lavatory? A He mentioned it, that he had to go to the lavatory.

Q He wasn't able even to talk to you when he first came into the emergency room, was he? A No.

Q And during the time that he was there, he cleared up somewhat, did he not? A When I first brought him into the emergency room, he couldn't say anything, and he would, in other words, mumble a few words; but they were incoherent.

Q But an hour later, after he had been there and received this treatment, he told you that he wanted to go to the lavatory, and you had no trouble understanding what he said? A That is right.

Q And you assisted him there? A That is right.

Q And when he came back, didn't he then sit
168 down on a chair? A He sat on a chair, on a bench, in the outside room.

Q And he sat on that bench in the outside room until the police officers took him away, did he not? A That is right.

Q And that was not in the emergency room, but was in another room? A In the adjoining room.

Q And did he tell you that he felt better at that time? A No.

Q You observed, however, did you not, that he was better? A No; he wasn't any better, in my estimation.

Q You had no trouble talking with him? He had no trouble sitting? A Only a few words could I understand.

Q And did you observe another occasion when he became ill and asked to go over to a receptacle where he might relieve himself, and did do that? A That was in the dispensary, in the room where they worked on him, the medicine room—after they had put the stitches in him.

Q And how long before he went to the lavatory
169 was that, Mr. Clark? A How long what?

Q How long prior to his going to the lavatory was it that he became ill and vomited? A I don't recollect that he vomited any at all, myself. I don't recollect that he vomited any at all. He was kind of wet at the mouth. That was about all—in other words, slobbering a little bit at his mouth, and wet. That was all. But not vomiting, as I remember.

* * * *

Q When you noticed this slobbering at the mouth that you have indicated, how long before you left was that? A Well, he was like that the whole time he was there.

Q When you noticed the slobbering at the mouth, did you notice the odor of alcohol at that time? A No, I did not.

Q Did there come a time, Mr. Clark, when the doctor—this gentleman over here—said to the police officers that he would release him? A I imagine he did. I imagine he did. They said they were going to take him. That is all I know. I didn't hear this man say he was going to release him.

170 Q You didn't hear any of that conversation? A None of that between him and the officers, no.

* * * *

Q Mr. Clark, at the time you left, how many other persons were in that room? A There was just the hospital personnel in the room there.

Q No one else was there? A Well, there was a young lady sitting there on the bench, and the nurse, and the two interns—or rather this doctor and the intern—as far as I can recollect.

Q Mr. Clark, did you observe the police officers and the hospital employees in there attempting to find out where Mr. Taylor lived? A Yes. While I was holding him on the table, and they were getting ready to work on him, the police went in his pockets and took his pocket-book out.

Q And was anybody ever able to ascertain where he lived, while you were there? A Well, not that I
171 know of, because on the permit it said Twentieth Street, Northwest. And from my recollection I said he lived on East Capitol Street—in other words, just a guess at it. I couldn't say where he lived, because I did not know.

Q Did you notice anyone make any attempt to get any further identification with respect to where he lived?
A No.

* * * *

Redirect Examination

BY MR. DAVIS:

Q Mr. Clark, do you know Mr. Taylor's brother, George? A I knew of him, yes, sir.

Q And do you know where George lives? A I knew approximately that Mr. Taylor and his brother George lived over on East Capitol Street, around those tourist homes somewheres that somebody could tell me something about it. I thought they lived over there.

Q Don't you know as a matter of fact that George

Taylor lives at 628 East Capitol Street? A No;
172 I didn't know it then, no.

* * * *

Q Am I correct now, from your testimony, you were never out of the physical presence of Mr. Taylor from the time you took him into the hospital until the time he left with the police? Is that correct? A I left for about 30 or 40 seconds, the time I walked away from him in the room and asked this doctor over here, was he going to release him to the police; and he said yes.

173 THE COURT: Just a moment. Just answer the question.

THE WITNESS: That was just when they were getting ready to go—enough to walk out in the room and come back.

* * * *

Q Have you ever had your blood pressure taken, Mr. Clark? A Yes, I have.

Q How is it taken by the M.D.—the medical doctor? A They wrap a tourniquet on your arm.

THE COURT: Just a moment, gentlemen. I think we can settle this matter without wasting too much time. Is there any contention that this man's blood pressure was or was not taken, as far as the defense is concerned?

* * * *

MR. DAVIS: The doctor has testified he did take it

THE COURT: I didn't hear any such testimony. I may have overlooked something.

MR. GALIHER: Your Honor, the best information the Doctor can give is that he believes that he did.

THE COURT: I don't think there was any testimony on that subject. The doctor didn't testify that he did.

MR. DAVIS: The doctor testified the nurse took it, if Your Honor please.

THE COURT: Took the temperature, not the blood pressure.

Well, you may ask the question.

Just answer yes or no.

BY MR. DAVIS:

Q You understand what is meant by taking a patient's blood pressure? A Yes.

Q Was that done by any of the personnel, as you have described it, at the hospital that morning? A No, sir.

Q While you were in the physical presence of Mr. Taylor that morning, was his temperature taken at any time? A No, sir.

Q Either rectal or by mouth? A No, sir.

* * * *

175 MR. DAVIS: I offer at this time, if the Court please, as Plaintiff's Exhibit 3-A and -B, the official records of Emergency Hospital concerning the ambulance call on the date in question, and their record concerning this patient thereafter.

* * * *

177 THE COURT: Suppose you state into the record what you want to get from this exhibit, but omit any diagnosis or description of condition.

MR. DAVIS: I read into the record—

"Ambulance call number"—which is Plaintiff's Exhibit 3-A—"No. 12610.

"Name: Theo Taylor, Francis Scott Hotel, 600 Twentieth Street, Northwest.

"Age 40; Sex male, Color white.

"Disposition: Brother in. Dr. Alper, driver Payne. Came through direct.

"Received the call May 25, 1949, 3:13 p.m.

"Left"—meaning the ambulance left—"May 25, 1949, at 3:13 p.m.

178 "Returned May 25, 1949, 3:42 p.m."

A preliminary on 3-B contains the same information as to the ambulance call.

"Emergency Department. Name: Theo Taylor"—same address.

THE COURT: Don't repeat all that.

MR. DAVIS: "Brought in Emergency Hospital ambulance—

"Dr. Alper. Nurse: Harper.

"Treatment: Rest room examination.

"Disposition of case: To Mount Alto in their ambulance.

"Valuables received: No."

THE COURT: Doesn't it come down to this, that at 3:42 p.m., May 25, the plaintiff was brought to the Emergency Hospital and, after an examination, was transferred to Mount Alto Hospital? Is that correct?

MR. DAVIS: That is correct, Your Honor.

* * * *

MR. DAVIS: May I have the Mount Alto Hospital records, and the X-rays?

* * * *

180 THE COURT: Is there any question about their being the genuine records?

MR. GALIHER: No, sir.

* * * *

MR. DAVIS: In addition to the records, which I think are Exhibit 4, if you will mark these X-rays 4-A,
181 -B and -C.

(The Mount Alto Hospital records were marked and received in evidence as Plaintiff's Exhibit No. 4.)

(The Mount Alto Hospital X-rays were marked and received in evidence as Plaintiff's Exhibits 4-A, -B and -C.)

* * * *

Stephen W. Nealon, Jr.,

* * * *

Direct Examination

* * * *

Q Dr. Nealon, will you state your full name for the record, please? A Stephen W. Nealon, Jr.

Q What is your residence address, Doctor?

* * * *

A 104 East Lenox, Chevy Chase, Maryland.

Q And your office address? A 1746 K Street, Northwest.

Q Are you engaged in the practice of medicine in this city? A I am.

Q How long have you been so engaged? A 182 Since 1936.

* * * *

THE COURT: Will the Doctor's qualifications be conceded?

MR. GALIHER: Certainly, Your Honor.

* * * *

Q Doctor, in your professional life have you had occasion to know Mr. Theo T. Taylor, the gentleman seated at counsel table? A I have, sir.

Q When did he first become a patient of yours? A I actually saw Mr. Taylor for the first time as a patient September 28, 1949.

Q And at that time, Doctor, what was his physical condition? A Well, at the time I saw Mr. Taylor, in September of 1949, I made a routine physical checkup. He complained primarily of fatigue and weakness and had described this accident that he had had in May, 1949, previous to my having seen him. And he told me that as a result of that accident, that he suffered a fracture of

the skull and had been hospitalized at Mount Alto for a considerable period of time.

I, as is routine, went into his past history, which was essentially negative, with the exception of the fact
183 that he told me he had had rather severe migraine headaches all his life, recurring at intervals of about every six weeks. He said he got those particularly when he was under pressure, and that occurred off and on since childhood.

His chief complaint, I think, as I stated, was his fatigue, and some dizziness and headache, which he said was considerably worse since the accident for which he had been hospitalized at Mount Alto.

Q When you first saw him, did he give you any complaint of recurrent frontal headaches and memory disturbances? A He told me that was one of his complaints, that he did have frontal headaches and he did have memory disturbances, yes, sir.

Q In gathering this history, Doctor, did you ascertain how long he had been in Mount Alto Hospital from the date of this accident he told you of on May 24, 1949?

THE COURT: Those facts can be stipulated, can they not? How long was he there?

MR. DAVIS: From May 25th to June 22nd, Your Honor.

THE COURT: Will that be stipulated, gentlemen?

MR. GALIHER: Yes, sir.

* * * *

Q Doctor, what physical examination did you make on the occasion of your first professional contact with
184 him? A I made a complete routine physical and neurological examination.

Q Did you make an examination also of his skull? A I did.

Q And did you find any scar present at that time? A There was a healed scar over the right occipital region, back here.

Q As a result of your physical examination of Mr. Taylor and this history he had given you, did you make any diagnosis at that time? A The physical examination, as conducted by me at that time, was essentially negative. There was nothing actually—

THE COURT: The question was, Did you make a diagnosis?

THE WITNESS: Oh, I beg your pardon.

Yes, I did. I made a diagnosis of a probable post concussion syndrome, to account for the headache—

THE COURT: "Post concussion" what?

THE WITNESS: Post concussion syndrome.

THE COURT: How do you spell that?

THE WITNESS: S-y-n-d-r-o-m-e.

THE COURT: What does that word mean?

THE WITNESS: Well, it actually is a pretty general term, Your Honor, which indicates a certain group of symptoms which might result from a certain illness,
185 which in this particular—

THE COURT: Yes; but what is it? Is it a serious matter, or what is it?

THE WITNESS: It is a very vague and indefinite term, really.

THE COURT: I see.

THE WITNESS: It is very difficult for me to explain.

THE COURT: Of course, you must realize none of us has a technical background and none of us knows these technical terms.

THE WITNESS: Yes, sir.

THE COURT: And they mean nothing to us unless you explain them. You see, the jury has to pass on this case, and the jury probably doesn't know and I know that I don't know what they mean.

Proceed.

THE WITNESS: Yes, sir.

Is there a question?

BY MR. DAVIS:

Q Upon what basis did you arrive at this diagnosis of a post concussion syndrome?

THE COURT: I still want to know what the matter with him was.

THE WITNESS: On physical examination I found no objective evidence of disease. The only thing I
186 found, on examination, was the presence of a healed scar on his head.

He gave me a history of headaches, dizziness and mental disturbances. And putting that together with the accident, I felt that that could well have followed an injury to the brain, because that type of thing can well follow the brain injury.

I did not have any objective evidence, however, to prove actually that Mr. Taylor did have a brain injury. I had no X-rays at that particular time. I had no previous record of his hospitalization at Mount Alto.

And that, actually, at the time of my examination was an impression, rather than a real diagnosis, because a diagnosis cannot be reached without considerably more information than I had at the time of my examination.

BY MR. DAVIS:

Q Doctor, in the course of your treatment of Mr. Taylor did you contact the physicians at Mount Alto Hospital, to verify this skull injury? A I did not personally contact them, no, sir; but I did receive somewhere along the line, a report. I have a report from Mount Alto; but I did not actually personally contact them.

Q You received a report from the Mount Alto officials concerning their treatment? A I have a report
187 from Mount Alto, yes, sir. I don't remember exactly where it came from.

Q And from that report did you ascertain that he had sustained on May 24th a fracture of the skull? A According to the final diagnosis off the copy of the report I have here from Mount Alto, they say he had a fracture

of the skull, linear, over his right occipital area.

Q Doctor, what course of treatment did you prescribe for this patient? A Actually, at the time of the original visit, I prescribed no specific treatment. I told him that I thought that he should rest.

But I was more interested in trying to find out exactly what the extent of his injury was, rather than trying to treat him. I think I may have given him some vitamins at that particular time, as a general upbuilding measure. But I did suggest that we pursue the matter to find out whether he really had trouble, you see. And at that time I suggested we have further neurological consultation to determine whether or not there was any residual of this apparent fracture which he had several months previously.

Q As a result of that recommendation, Doctor, did you refer him to a neurologist? A I referred him to Dr. John Gallagher, yes, sir.

Q And was he examined by Dr. Gallagher, to
188 your knowledge? A Yes, he was.

Q Did Dr. Gallagher report back to you concerning that examination? A Yes, he did.

Q Would you give us the date of that examination?
A April 27, 1950.

Q Dr. Nealon, when did you next see Mr. Taylor? A The first visit was September 28; and the second visit, the second time I saw Mr. Taylor, was on the 21st of October, 1949.

Q What were his complaints at that time? A His complaints were practically the same as they had been on the previous visit; and he told me at that time that he had not as yet consulted with Dr. Gallagher, but that he planned to do it in the near future. And I encouraged him to see Dr. Gallagher as soon as he could, so that we might actually arrive at some very definite conclusion.

And I still find nothing specific in the examination at that time. He states, actually, in his own words, that he

cannot think, he fatigues easily and he repeats in conversation, and so on.

So at that point I again encouraged him to see Dr. Gallagher, because I actually found nothing on my examination on the examination that I did; and I was
189 anxious to have him consult a neurologist to find out the extent of his injury, you see.

But there is one thing I did do. In the meantime I had X-rays—Dr. Joseph Blair X-rayed his skull on the 28th of September, 1949, which was the day of his original visit, which was the only actual diagnostic procedure I subjected him to other than the physical examination I made.

Q Do you have those X-rays taken by Dr. Blair? A I don't, sir. Dr. Gallagher has them.

Q And when did you next see Mr. Taylor, Dr. Nealon? A I did not see him again until March 29th of 1950.

Q What was his condition at that time? A His general situation, as far as he was concerned, was pretty much the same. He had continued to pursue his usual duties. He said he still fatigued. He complained again of these headaches, which he described, according to the notes I made at the time, somewhat as these headaches he had had previously back in 1945.

But I particularly was impressed with the no pep, inability to do very much; and the examination, as I have made a note here, there was nothing new on the physical examination at that particular time.

Q These subjective complaints he made, Doctor, concerning his fatigue, his extreme tiredness and his headaches, could they have been the result of this linear
190 fracture of the skull on May 25, 1949? A Could they have been the result—his headaches?

Q Yes. A Well, it is possible, of course. Headaches do follow skull fractures.

The X-rays that Dr. Joseph Blair, the roentgenologist, took for me on the 29th of September were negative. And

I actually did not see the X-rays, but I had a report from Mount Alto that he did have a fractured skull.

So I assume, to answer the question academically, it is entirely possible the headaches could be due to the fracture.

Q Doctor, in your professional practice do you specialize in any particular branch of your profession? A Well, I do internal medicine, I do general medicine. I am a qualified internist, so to speak.

Q Have you had experience in interpreting X-rays? A No, sir, I have not.

Q Are you familiar with the science of roentgenology at all? A I look at them, but I certainly am not a qualified X-ray man.

THE COURT: Doctor, you just stated it is possible that the headaches were due to the skull fracture. Can you express a definite opinion as to whether they
191 were or were not?

THE WITNESS: No, sir; I could not, Judge.

BY MR. DAVIS:

Q Doctor, when did you last see Mr. Taylor in connection with this same injury? A I saw Mr. Taylor on the 29th of March, and I also saw him again on the 31st of March. And the reason for that was that I felt that his fatigue might well be due to something else, and I pursued the possibility of him having a low blood sugar. And I checked his blood sugar, to be sure that that was not entering into the picture. So he came in for some special, additional tests at that particular time.

* * * *

Q I am just inquiring about the condition of this skull injury, Doctor.

When did you last see him in connection with
192 this skull injury? A Well, it would be hard for me to answer that, because I treated Mr. Taylor in June of 1950 for pneumonia, and I saw him a number

of times. And during the course of that treatment, I was still sitting up for any possible neurological developments secondary to this previous injury.

So that during the month of June, of 1950, I saw him frequently for the pneumonia; and during that time I did have in the back of my mind the possibility of this old injury. So I did check him up for that and actually found nothing on neurological line at that particular time.

Q Did you see him professionally after June of 1950?

A The last time—yes, sir; I did. He was seen September 27th of 1950. That is the last time I saw him professionally.

Q What complaints did he make to you in September of 1950, on the occasion of your last observation of him?

A I actually have no notes on that. I think that, as far as I recall, he was getting some vitamin injections, which I started following his pneumonia, to give him a lift from the infection that he had had; and that carried on through into August and September. And I did not make any examination in reference to the head injury during that time at all.

Q Doctor, when you saw him in June, at the same time you were observing him for further neurological symptoms, at the same time you were treating
193 him for this pneumonia, what complaints if any did he make as to fatigue and headaches at that time?

A Well, I have a note here of June 26, 1950—and this is directly from my office notes—

“Getting very fatigued since his recent bout with pneumonia, and since his injury.

“Daily headaches on the right side of his head, and pain in his right eye.”

And that was an office visit. I had previously treated him at home for his pneumonia. And it was at that time that I instituted some vitamin therapy, mainly for his fatigue, to see if I could help him a little bit after the infection.

Q I believe you have mentioned, Doctor, that you had doubt at the time that there may have been some condition relative to his blood sugar which may have caused these headaches and fatigue and nervousness.

As a result of your routine tests on the blood sugar, did you ultimately rule any defective blood sugar condition out? A Yes, I did. The blood sugar was perfectly normal.

Q Did you take any electro-cardiograph or electro-encephalograph in connection with your treatment? A I took an electro-cardiogram, but no electro-encephalogram.

194 Q And what was the result of the electro-cardiogram? A The electro-cardiogram was within normal limits.

Q It had no bearing on these complaints you have just mentioned? A None whatsoever.

Q And how about your routine blood analysis and urinalysis? Did you take those specimens during your treatment? A Yes, I did. The routine urine studies were negative; and the routine blood studies were within normal limits.

Q And they had nothing to do with this condition of nervousness, headaches and restlessness? A Not as far as I could tell, no.

* * * *

197 Q Now Doctor, assuming Mr. Taylor, a 40-year old white male, in good condition prior to May 24, 1949, sustained an injury as a result of being pushed or shoved, falling to the sidewalk, as the result of which he sustained a linear fracture of the occipital region of the skull, which rendered him unconscious; he was taken to the emergency room of a local hospital, in an unconscious condition, at which time a laceration of the occipital region of his skull was shaved, cleansed and sutured with four sutures.

Would good medical practice have dictated his admission as a patient to that hospital for further observation with respect to a possible concussion or brain injury?

MR. GALIHER: I object to that question.

THE COURT: On what ground?

MR. GALIHER: First of all, Your Honor—

THE COURT: Suppose you gentlemen come to the bench.

(At the bench:)

MR. GALIHER: First of all, Your Honor, Mr.
198 Davis started out with the words "a man in good condition."

According to Dr. Nealon, he has given a history of migraine headaches over a long period of time.

THE COURT: But that isn't the point. I don't think it makes any difference whether he was in good condition or bad condition previously. The question propounded to the witness is whether it would be good medical practice to have him admitted to the hospital.

MR. GALIHER: I don't believe the pretrial order says that that is one of the grounds for the complaint, does it? I thought it said they failed to diagnose his condition and failed to take an X-ray.

THE COURT: There are two items of negligence charged in the pretrial memorandum. One is failure of the hospital to admit Taylor for observation, and to X-ray him.

MR. GALIHER: I see.

THE COURT: And the second, erroneous diagnosis of intoxication.

Of course, the second one has been completely demolished.

MR. GALIHER: I further object to the question because I do not believe, on the basis of what Mr. Davis has asked him, he could answer the question. Mr. Davis

has not given to him anything that went on in the emergency room.

199 THE COURT: I am going to sustain the objection. I do not think that is a proper hypothetical question.

Then I have another thought in mind, gentlemen. I think the question is very ambiguous. Some sick people go to the hospital, and some do not. I have no doubt that the answer to that question would be yes, that it would be good medical practice to admit him in the hospital. What you really want to know is if it was the wrong thing not to admit him to the hospital.

I am going to sustain the objection.

* * * *

Q Doctor, assuming Mr. Taylor as you have described him, a white man 40 years of age, who had previously been in good health prior to May 24, 1949, with the exception of migraine headaches, sustained an injury on the early morning of May 24, 1949, as a result of which he sustained a linear fracture, about five centimeters in length, of the right occipital area of his skull, and as a result of such injury was taken from the scene where he sustained it, in an unconscious condition, to a local hospital, and while there in the emergency room had
200 the laceration itself shaved, cleansed and sutured.

Would it have been bad medical practice not to have admitted such an individual for further observation and study and to rule out any diagnosis of fracture until an X-ray could be made?

MR. GALIHER: I object to that question.

THE COURT: On what ground?

MR. GALIHER: First of all, Mr. Davis—

THE COURT: I think you had better come to the bench, gentlemen.

(At the bench:)

MR. GALIHER: Mr. Davis has not included the fact that the man seemed to clear up, seemed to respond.

THE COURT: I will let you do that on cross examination.

MR. GALIHER: He has not brought out the fact that he was observed for anywhere for an hour and 45 minutes to two hours.

THE COURT: You can do all that on cross examination.

I am going to allow the question.

But you know Mr. Davis, the real point here is whether there was negligence in failing to discover the skull fracture. I think everybody will probably agree that on the diagnosis made by Dr. Salazar it was proper to release this man. Dr. Salazar did not discover the fracture of the skull. And I really think that before this case
201 ends, in order to prevail, you will have to show some negligence in failing to discover the fracture of the skull, because doctors make mistakes just as lawyers do.

I am going to allow this question; but I want to call this matter to the attention of both of you that the real question is whether there was any negligence in failing to discover the fracture of the skull, because of course he should have been admitted if Dr. Salazar knew he had a fractured skull, and I am sure Dr. Salazar would have gotten him a cot in a hall somewhere, if there were no beds available and the man had a fractured skull. But the point is that he didn't discover the fractured skull, and that is your difficulty. You have to show there was negligence and not mere error of judgment in failing to discover a fractured skull.

I will allow the question to be answered.

* * * *

202 MR. GALIHER: If Your Honor please, I went over the record, at Your Honor's suggestion, Mr. Barry and I, and we find the doctor Mr. Davis would have to have called, who made most of these entries, is

in Korea. And in fairness to Mr. Davis, realizing his position, we have indicated our consent to allow him to read the chronology, the report of Dr. Winfield, and everything he has to say about it.

* * * *

BY MR. DAVIS:

Q Dr. Nealon, during the recess did the reporter read the question to you? A Yes, he did.

Q Do you understand it, sir? A Yes.

Q Will you give us your answer, please? A Well, the only way I can answer that question is in this manner, that if it had been known that the man had a fracture of the skull, of course it would be good medical practice to have him admitted to the hospital.

203 Of course, if it was not known that the skull was fractured, I can't see how it would be bad practice to have him leave the emergency room. As all of us know who have worked in emergency rooms, the number of people you see, in the course of a day, a week or a month, with various types of injury, it would be good, it would be excellent practice, if he could be admitted. But we just don't admit the majority of them when we don't find any obvious thing wrong with them.

To try and be more specific, I reviewed the Mount Alto record and I see, even on the time of his admission to Mount Alto, that aside from his stuporous state, that his neurological examination was basically negative, you see.

In other words, the report specifically states that the deep reflexes were hyper active and there were no sensory changes noted; a negative Babinski sign, and no pathological reflexes noted.

That was, of course, the day of his admission to the Mount Alto Hospital, and there was nothing specific on the neurological examination. So you couldn't answer the question—

THE COURT: I think you have answered it.

* * * *

Q Doctor, may I ask you this?—

Assume the facts in the previous question, and
 204 considering the fact that this patient sustained a
 fall serious enough to cause a scalp laceration re-
 quiring four sutures, resulting in a concussion of the
 brain, would it not have been good medical practice to
 confirm or rule out any possibility of fracture, by ad-
 mitting the patient for observation and X-ray?

* * * *

THE WITNESS: I would have to answer it in
 exactly the same way. Of course, if you knew that that
 was a fact, then it would be good practice to admit him.
 If you actually knew for a fact that he had that, yes, I
 would say that the man should be admitted.

* * * *

Q That is, if he had a laceration requiring four
 stitches, and a concussion? A Not for the laceration
 alone, and not—well, the concussion is something that is
 very vague and indefinite. I mean, the fact that a con-
 cussion is a very vague sort of thing, it is something
 that is very difficult to explain. And somebody
 205 who has a little cerebral trauma, who receives a
 blow on the head, might have a small amount of
 concussion, that a little bit of rest will quiet right down,
 you see. And that of itself is not too important.

The thing in those cases we worry about is the forma-
 tion of some blood clot within the brain which would
 put pressure on the brain, or some actual laceration of
 the brain itself.

THE COURT: I think you are getting away from the
 question. The question is whether it would be bad prac-
 tice not to admit to the hospital a person who has had a
 laceration.

Is that it?

MR. DAVIS: Yes, and a resulting concussion.

THE COURT: And a resulting concussion.

BY MR. DAVIS:

Q And then hold him for observation and X-ray to rule out any possibility of fracture. A Well, as far as the laceration, the answer is no, because every emergency room I am sure treats many, many lacerations every day.

If you know that the man has a severe concussion and a fracture, of course—

THE COURT: Suppose you know only that there is a laceration and some concussion?

THE WITNESS: Then I would say there would
206 be plenty of reasons why he should not be admitted.

THE COURT: Why he should not be admitted?

THE WITNESS: Yes, sir.

BY MR. DAVIS:

Q What is the proper course of treatment, Doctor, for a person suffering with a concussion of the brain?

A There is actually no specific treatment. The most important thing is simple observation. And as I pointed out a moment ago, the thing we worry about is developing some possible brain pressure, you see, as a result of hemorrhage.

Q Isn't complete bed rest and sedation also a proper course of treatment? A Rest is the treatment, yes, sir.

Q Rest is the treatment? A Yes.

Q Rest, coupled with observation? A With observation; that is correct.

* * * *

MR. GALIHER: We have no questions, Your Honor.

* * * *

207 MR. DAVIS: This is the summary of Dr. Raymond J. Winfield, M.D., entitled "Final Summary, June 22, 1949."

(The final summary, being a portion of Plaintiff's Exhibit No. 4, was read by Mr. Davis.)

MR. DAVIS (continuing): This is signed by Raymond J. Winfield, M.D., Surgical Service; approved, T. J. Teakin, M.D., Chief Medical Officer.

* * * *

208 THE COURT: Now, Mr. Davis, in the interest of simplifying things and clarifying the Court's thinking, and perhaps the jury's thinking, what is the sum total of this report you have read? What does it show?

MR. DAVIS: It shows that on the date of admission, May 25, 1949, this man had a linear fracture of the right occipital skull; he was hospitalized for observation and further studies to rule out complications, for a period of approximately one month, to June 22nd, that he thereafter returned as an out-patient for some time for further X-ray studies.

THE COURT: In other words, to simplify it still further, upon admission to Mount Alto Hospital it was found he had a skull fracture, and he was kept for one month—

MR. DAVIS: Yes, sir.

THE COURT: —not for treatment, but for observation.

MR. DAVIS: Well, hospitalization.

THE COURT: And then he was observed later on for a period as an out-patient?

MR. DAVIS: Yes, Your Honor.

* * * *

209

John P. Gallagher

* * * *

Direct Examination

BY MR. DAVIS:

Q Doctor, will you state your full name for the record, please? A Dr. John P. Gallagher.

* * * *

Q Do you specialize in any particular branch of medicine, Doctor, in your practice? A The surgical treatment of diseases of the nervous system.

Q You are known in the medical profession as a neurosurgeon? Is that correct, Doctor? A Yes.

Q From what school did you receive your M.D. degree?

THE COURT: Will the doctor's qualifications be conceded?

MR. GALIHER: Yes, indeed they will, Your Honor.

* * * *

210 Q Doctor, in the course of your professional career did you have occasion to see and examine Mr. Theo T. Taylor, at the request and recommendation of Dr. Stephen W. Nealon? A Yes; I saw that man and examined him on the 26th of April, 1950.

Q And, Doctor, at that time will you state briefly what symptoms you observed, what complaints were made by Mr. Taylor, and your diagnosis as the result of your examination? A You want these in brief?

THE COURT: Very brief, yes, sir.

THE WITNESS: His chief complaint when I saw him—complaints, rather—were those of headache, disturbances in memory, and fatigue.

* * * *

THE COURT: And what was your diagnosis?

211 THE WITNESS: Yes. The diagnosis was a post-concussion syndrome.

THE COURT: And what does the word "syndrome" mean?

THE WITNESS: A set of medical complaints. In other words, he presented a picture or evidences of having received a concussion, and was suffering from the effects thereof.

THE COURT: Yes, but what does the word "syn-

drome" mean? You are the second witness I have asked that, and I haven't had an answer yet.

After all, you are talking to people who have no medical training.

THE WITNESS: A "syndrome" is a complex or a set of symptoms, or a set of conditions, that adds up into one clinical picture. It is a clinical picture.

THE COURT: What was the picture, then?

THE WITNESS: The picture was that of a post-concussive syndrome, or a post-concussive condition.

THE COURT: And what does that condition consist of? That is just going around in a circle and begging the question, as the old logicians used to say.

THE WITNESS: I am trying not to, Your Honor.

THE COURT: You describe his condition because, as I see it from your statement, the word "syndrome" is equivalent to "condition."

THE WITNESS: Yes, sir; that is correct.

212 THE COURT: What was the condition?

THE WITNESS: On examination, he displayed tenderness over the posterior part of the head and the scalp.

The cranial nerves, which are the nerves which refer specifically to special senses, were examined and they were found to be negative.

The examination of the motor system, which refers itself chiefly to a patient's reflexes and the condition of his muscular system, was examined, and found to be normal.

Sensation and coordination tests were carried out, which showed the presence of a tremor in the upper extremities, especially on the right side, as well as some unsteadiness in the upright posture—unsteadiness in gait, unsteadiness for standing.

THE COURT: Doctor, was there anything the matter with him; and, if so, what was it? That is what we want to know.

THE WITNESS: Your Honor—

THE COURT: I am sure the jury wants to know that, and certainly the Court does.

You see, you have to simplify things.

THE WITNESS: I am doing my best.

After taking a history and after examining him—

THE COURT: The question is, Was there anything the matter with him?

THE WITNESS: Yes.

213 THE COURT: And what was the matter with him?

THE WITNESS: Well, he had sustained a head injury and was still suffering from the effects of that blow to the head.

THE COURT: What were the effects he was suffering from?

THE WITNESS: Well, they can be characterized in two ways. One, things he complained of to me, which I spoke to you about in the original; and secondly, things that I observed.

THE COURT: What did you observe?

THE WITNESS: I just recounted them.

THE COURT: Oh, no. Suppose you translate them. Don't tell us the things that were normal. Tell us the things that were wrong, and in simple, non-technical English.

THE WITNESS: Well, as I said before, he showed unsteadiness, or a tremor, in his upper extremities, especially those of the right side, in the case of the right upper.

He also showed some unsteadiness in his gait, both for walking and standing.

The conclusions were therefore reached that he had suffered a concussion.

THE COURT: Very well. I think you have answered the question. You have clarified it to me, at any rate.

* * * *

214 Q And by "concussion," Doctor, you mean a concussion of the brain? A Yes, sir.

Q And in obtaining a history of the patient upon which you based this diagnosis, were you informed that he had suffered an injury to the skull on May 24, 1949?

A I was informed he had sustained a blow to the head in May, 1949. The date was not specified.

* * * *

Q Were these symptoms you say you found Mr. Taylor suffering from in April, 1950, in your opinion the result of a linear fracture of the skull sustained on or about May 24, 1949? A No, sir.

Q What did you attribute those complaints in
215 your diagnosis to? A To the concussion of the brain.

Q In your opinion could they have been the result or the residuals of a concussion sustained on that date, that is, May 24, 1949? A Yes, sir.

Q Now, Doctor, I will ask you this question:

Assume that an individual in Mr. Taylor's physical condition, his age, weight, and so forth, sustained a fall on the date of May 24, 1949, as a result of which he struck his head on the pavement, sufficient to cause a laceration requiring four sutures in the occipital region, and on that very occasion was rendered unconscious and suffered a concussion of the brain.

Are you able to tell us whether or not the failure to promptly hospitalize such a patient would aggravate his recovery from a linear fracture sustained at the same time?

* * * *

Q Do you understand the question, Doctor?
216 A Yes, I do. I think that is a hard question for a man so remote from what transpired at the time of injury to answer. I don't think I can answer that truthfully and accurately.

Q Well, with a skull fracture requiring four sutures resulting in an immediate concussion and a state of unconsciousness, would good medical practice dictate the admission of such an individual for further observation and to rule out the possibility of fracture, by a subsequent X-ray?

MR. GALIHER: If Your Honor please, I object to that, because there was no knowledge of the linear fracture.

THE COURT: I am going to sustain the objection to that question.

Perhaps you misspoke yourself. You don't mean a fracture of the skull requiring four stitches?

MR. DAVIS: No—a laceration of the scalp requiring four stitches.

THE COURT: A laceration of the scalp requiring four stitches. I will allow the question, with that amendment.

BY MR. DAVIS:

Q With that amendment, Doctor, could you answer?

A The essence of the question is, Should a man with a laceration of the scalp have been admitted to the hospital?

THE COURT: Yes.

BY MR. DAVIS:

217 Q And an immediately resulting concussion, resulting in unconsciousness, be admitted for further observation and X-ray?

MR. GALIHER: Your Honor, may I again object, because Mr. Davis has not brought out that the man was observed for a period of time prior to his release; and I think it is fair to the Doctor that it be brought out.

THE COURT: Yes; I think that may be pertinent. But I will let you cross examine the Doctor about that, if the Doctor is able to answer this question. He may not be, judging from his position on the preceding question.

THE WITNESS: I think there are too many unknown factors in the thing. I have no knowledge of how closely this man was examined. I have no knowledge of how long he was observed, for example, in the emergency room or in the hospital or wherever he was. I can't answer that accurately, sir.

BY MR. DAVIS:

Q Assume, Doctor, the evidence is that he was examined in the emergency room, for a period of approximately an hour and a half to two hours, during which these sutures were inserted, the scalp wound was cleansed; and that he was observed during the course of the suturing; and then released.

Would good medical practice have dictated his admission for further observation, bearing in mind— A There are other qualifications that have to be taken into
218 consideration. You haven't told me, for example, whether or not this man was conscious or unconscious during the time he was in the hospital.

I can't answer that.

Q The evidence is that the man was unconscious. A During the entire period?

THE COURT: No; that isn't the evidence. The evidence is that he came to towards the end of the two-hour period.

MR. GALIHER: And the evidence also is, Your Honor, that this wound was examined and felt by the Doctor; and Mr. Davis did not include that.

THE WITNESS: I can't answer that, sir.

BY MR. DAVIS:

Q Is it possible, Doctor, to detect a linear fracture of the skull solely by manipulation? A I don't think anyone attempts to detect a linear fracture of the skull by manipulation.

Q What is the only definite way to detect a linear fracture of the skull? A Either by direct inspection or perhaps palpation.

Q By "palpation" you mean moving the skull with your hand? A No. I mean inserting your finger into the wound and seeing if you can feel a crack.

Q Is that an infallible way of testing it? A
219 No, of course not. It isn't infallible.

THE COURT: Is anything infallible in medicine?

THE WITNESS: You know how it is, Your Honor.
BY MR. DAVIS:

Q Isn't it a fact, Doctor, that the only positive way of ruling out a fracture of any type of the skull is to do so by X-ray? A For certain types, yes, sir—for certain types.

Q Isn't it difficult also, Doctor, to distinguish also what is known as the suture line of everyone's scalp, from a fracture? A Sometimes it is exceedingly difficult to discern the two.

* * * *

Q What recommendation, if any, did you make
220 to his attending physician, Dr. Nealon? A I recommended at the time I saw him to Dr. Nealon, in a private communication, that it may become necessary to have him hospitalized, for appropriate investigative studies.

* * * *

MR. GALIHER: No questions.

* * * *

THE COURT: How many more witnesses, if any, have you, Mr. Davis?

MR. DAVIS: Approximately five, Your Honor, including the plaintiff.

THE COURT: Oh, no.

Will you come to the bench, please?

(At the bench:)

THE COURT: Who are the other witnesses?

MR. DAVIS: The most important one, of course, is

the plaintiff; and I have his wife, corroborating his
221 convalescence.

THE COURT: You don't need that, do you?

MR. DAVIS: We need that to prove his injuries and to corroborate his disability.

THE COURT: There is no evidence in the case as yet connecting his condition with anything that happened to him in the hospital, or failure to admit him to the hospital.

Who else are you going to call?

MR. DAVIS: I have Sister Marie, from Providence Hospital.

THE COURT: What are you going to prove by her?

MR. DAVIS: The presence of beds available to admit this patient.

I have Mr. McKibbin, the manager of the Francis Scott Key Hotel, who accompanied the patient to Emergency Hospital from his hotel, as to his condition at that time, which was stuporous and semi-conscious.

THE COURT: You have all that in the medical testimony. And what else?

MR. DAVIS: And then I have an officer that I want to make a proffer, in line with Your Honor's ruling of yesterday.

THE COURT: You mean this morning?

Well, proceed.

MR. DAVIS: And I have subpoenaed records of the Board of Revocation of Permits.

222 THE COURT: I am going to exclude all that.

I will let you make a proffer, if you wish, but I don't want you to have an official of the City Government sitting around here in the witness room wasting the taxpayers' time, with a set of records here for that purpose.

MR. DAVIS: That officer is here this afternoon—and with that statement, I will excuse him, and make the proffer in the morning.

THE COURT: Yes. Ordinarily I don't like proffers

made in the absence of a witness being available, but here I think in the interest of the efficiency of the District Government we ought to do that.

MR. GALIHER: Yes, sir; it is all right.

THE COURT: Try to make it brief. I think you have all your case in.

And bear in mind you have not proved causation yet.

MR. DAVIS: Very well, Your Honor. I will bear that in mind.

THE COURT: I would entertain any objection to proof of damages until causation is shown.

MR. GALIHER: I will so move at this time, Your Honor.

THE COURT: No. I think the proper time for you to make that objection is when proof of damage is offered.

MR. GALIHER: Yes, sir.

THE COURT: How much would you have, if
223 you have to go on?

MR. GALIHER: We have the nurse, and we have Dr. Foucher.

THE COURT: I see. All right. Thank you.

I hope you can finish your proof by the middle of the morning.

* * * *

226 THE COURT: I suggest again that you eliminate any repetitive or cumulative testimony on matters not in dispute, and confine your testimony to any relevant, disputed matter.

* * * *

George D. Taylor,

* * * *

Direct Examination

* * * *

Q Mr. Taylor, will you state your full name to the Court and jury, please? A George D. Taylor.

Q Where do you live? A 628 East Capitol.

Q What is your occupation? A Sightseeing business.

Q How long have you been in the sightseeing business? A Twenty-nine years.

Q Are you related to the plaintiff in this action,
227 Mr. Theo T. Taylor? A Yes; he happens to be my brother.

Q And are you associated in business with him, sir?
A Part of the time.

Q Directing your attention to the morning of May 25th, 1949, did information come to you concerning the whereabouts of your brother about 3 a.m.? A Yes.

Q And from whom did you receive that information?
A I received a telephone call that he was locked up for being drunk.

Q As a result of that call, what did you do? A I dressed as soon as possible and went downstairs, and there was a man out there waiting for me who told me they had locked him up for being drunk.

* * * *

Q What did you do as a result of that call, Mr. Taylor? A I went down to the precinct.

Q Which precinct? A No. 5.

Q Did you see your brother on arrival there?
228 A I did, by getting permission and the police going with me.

Q Where was he at that time in the precinct? A Laying in the cell, on a cot.

Q Was he on a cot in the cell, or on the floor?

THE COURT: That is immaterial. What do you want to bring out by this?

MR. DAVIS: I want to show the physical and mental condition of the plaintiff at that time, if the Court please.

THE COURT: For what purpose?

MR. DAVIS: To show that he was unconscious; that he didn't know—

THE COURT: Very well. You may proceed.

BY MR. DAVIS:

Q What was your brother's condition when you saw him in the precinct at that time? A He was laying on the cot, groaning and mumbling something. I noticed he had blood on his shirt. I tried to get him up, and I couldn't get him up. And a policeman come and he tried to get him up, and we didn't get him up. So him and I got one arm apiece and carried him out.

Q Can you fix that time, Mr. Taylor, what time in the morning it was? A It was around 4:30 or 4:15.

Q What did you do thereafter with your
229 brother? A Well, after I put up this money for him, for being drunk—I told the policeman I didn't believe he was drunk, I still said—and he helped me put him in the car, the automobile, his own automobile.

Q His own car was then at the precinct? A His car was at the precinct. They gave me the keys. I laid him in the back of the automobile. I wasn't very strong, but enough from physical or manual labor to handle one man by myself; so I carried him to the garage.

Q Which garage was that? A My own garage.

Q In the rear of your home? A In the rear of my lot, yes; and locked it and took the keys. And I went to get help.

When I finally found the man that worked with him,

him and I went to the garage, and he was out, out of the garage.

So I said, "I wonder where he could have gone, and who took him out." So I commenced looking around, and found his automobile, parked on B Street. I went across to the restaurant where he generally goes.

Q Let me interrupt you at that point. What time was it when you say you locked him in your garage? A Around 5 o'clock, 5:15. It was in between those few minutes.

* * * *

230 Q When did you next see your brother that morning, Mr. Taylor? A In Rector's Restaurant.

Q Give us the address of Rector's Restaurant. A I don't know the exact address of that. It is right on B Street, the second restaurant from the corner.

Q And what was his condition and what was he doing in the restaurant? A He was laying there just like this, and had a cup of coffee in front of him. I tried to get him to talk to me, and asked him questions about some people.

He didn't know, and he would mumble something, and I never did get any sense out of him.

231 Well, Mr. Lockwood helped me carry him to the automobile. I carried him to the apartment, which was the Francis Scott Key Hotel.

Q Was that the apartment where your brother then lived? A Yes, he lived there.

Q How long prior to that time had he lived at the Francis Scott Key? A Off and on for the last two years.

Q That is prior to May 25, 1949? A That is right.

Q And what did you do when you arrived there? A I carried him upstairs, and I put him on a cot—on his bed, rather.

Q In his own room? A In his own room.

Mr. McKibbin helped me. That is the owner of the hotel.

I drew a tub of hot water, and I couldn't get him out. In fact, I couldn't lift him out there and put him in his bed, because he didn't know me and didn't know where he was, or what; and I couldn't get any sense out of him.

And I visited him later on, and I told Mr. McKibbin, I said, "I have to get something done here with this man."

232 Q You can't tell us any conversation. Just tell us what you did. A Well, I went down and called a doctor.

Q Do you recall the name of that doctor? A Yes, I will. It was two of them. I called Dr. Gay, and he was out of town. I called Dr. Hadley, and Dr. Hadley said, "I can't come for a few minutes, for 30 or 40 minutes."

And I said, "That will be too late."

And Mr. McKibbin said, "I will get a doctor," and he called Emergency Hospital.

And Emergency Hospital come over there and I saw them take him out and take him down there. And I went back to the house and I got in touch with my daughter.

Q How was your brother taken out of the Francis Scott Key Hotel? A He was taken out by the hospital attendants.

Q I mean, did he walk out or was he taken out on a stretcher? A He was taken out on a stretcher.

THE COURT: And in an ambulance?

THE WITNESS: Not out of the room. He was taken out of the room on a stretcher, and then he was taken to the Emergency Hospital in an ambulance.

BY MR. DAVIS:

233 Q Did you accompany the ambulance? A No; I saw them take him down there, and carried him into the hospital. They wouldn't let me go in, at that time.

Later on I visited back there, which I knew there was another ambulance coming, from Mount Alto. In fact, they, said they would, and in fact they carried him out of the hospital.

Well, when they got out of the hospital, I followed them up. And as soon as they would let me go in the Mount Alto Hospital, I saw him lying in there. When I saw him in there, they had something or other feeding him through a glass tube.

Q You mean they were feeding him intravenously through the veins? A Yes, sir.

Q And was that the same night? A Yes, sir.

Q May 25, 1949? A That was May 25, on that night.

Q At any of these times that you saw your brother on May 25th, Mr. Taylor, was your brother drunk or intoxicated? A I have never seen him drunk.

* * * *

234 MR. DAVIS: May I at this time make the proffer at the bench, if Your Honor please, that I suggested yesterday?

THE COURT: No; I have ruled out this issue. You may make a proffer at the bench.

You may come to the bench, if you wish to make an offer of proof.

MR. DAVIS: I will, Your Honor, as soon as I get these exhibits.

(At the bench:)

MR. DAVIS: If Your Honor please, I propose to offer in evidence the original receipt—

THE COURT: Just a moment. You can't make that offer of proof. The only proof you can make now is on the question that I have excluded, namely, you have asked the question whether the witness' brother was drunk. I have excluded that. If you wish to make an offer of proof as to that, you may do so.

MR. DAVIS: Well, I wish to prove by this witness,

as well as the previous witnesses who have testified, that the plaintiff was not drunk on May 25.

THE COURT: Will you tell me what that has to do with the case?

235 MR. DAVIS: Yes, Your Honor. We are claiming damages for false arrest, false imprisonment.

THE COURT: Well, I have ruled that out.

MR. DAVIS: I want to make my offer of proof for the record.

THE COURT: Very well. But one offer is as good as a dozen, to protect the record. You have made that offer yesterday. Please don't repeat it. It is on the record, and I adhere to my ruling and exclude the testimony, for the reasons heretofore stated.

MR. DAVIS: May I make the complete offer, for the record, in line with the claim for damages, if Your Honor please?

THE COURT: No. You may make the offer in relation to the question I have excluded.

MR. DAVIS: I think, in the interest of time, rather than make successive offers of proof—

THE COURT: Very well. What else do you wish to offer to prove, by this witness?

MR. DAVIS: That he posted the collateral called for on this receipt, on the charge of drunkenness; that as a result of that, this charge was ultimately nol-prossed before Judge Myers of the Municipal Court, with the acquiescence of the Corporation Counsel, Mr. Kane; that
236 as a result of this charge, even though it was nol-prossed, when Mr. Taylor's application for renewal of his hacker's license was made, on June 21, 1941, it was disapproved by the Board of Revocation and Restoration of Hacker's Permits, on June 29th;

That he thereafter, through counsel, filed a petition for a hearing, and had a hearing before the Board on July 11, 1949; that that was not approved by the D. C.

Commissioners until August 9, 1949, at which time his card was restored to him;

That as a result of that, he was unable to pursue his occupation for a period of the time he was in the hospital, and then after the disapproval of his application for renewal, until after August 9, 1949; and that henceforth his card has been reissued annually.

THE COURT: I am going to exclude that, on the ground that there is no substantial evidence from which an inference can be drawn that either of the two defendants was responsible for the arrest and the consequences thereof.

MR. DAVIS: Very well.

* * * *

237 BY MR. DAVIS:

Q After his release from the hospital, Mr. Taylor, do you have any personal knowledge as to when he was able to resume his occupation?

* * * *

THE WITNESS: Well, he tried to work, when he could, maybe three or four weeks later, as soon as he could get his identification card back.

BY MR. DAVIS:

Q How closely have you been associated with your brother during the intervening three and a half years since this occurrence? A We are very close.

238 Q You are the only two members of your respective family in the District, isn't that true? A That is right.

Q And you are associated in business together? A A number of times.

Q Can you tell us anything of his physical health prior to May 25th, 1949?

* * * *

A Well, to the best of my knowledge, he is one of the best salesmen I know of.

* * * *

Q I don't believe you understood my question, Mr. Taylor. My question was what was his general
239 health prior to the date of this occurrence? A Very good.

Q Have you noticed any difference in his health since May 25th, 1949? A Quite a bit.

Q Will you tell us what the difference is? A Well, he don't seem to concentrate on things like he did before that time.

Q Has he been able to do a full day's work since the occurrence of this incident? A I don't know exactly but what sometimes—this business he is in, sometimes you get these people all right in one group, and you have got a day's work, and then you quit.

Q Have you noticed anything with reference to any lapses of memory with respect to your brother? A Yes.

Q Have you noticed anything with reference to his habit of repeating what he has previously said, possibly a half hour previously? A A number of times.

Q Have you noticed anything with reference to his being easily fatigued? A He is very easily worried.

* * * *

240

Cross Examination

* * * *

Q How long have you lived in the District of Columbia? A Ever since 1928.

Q Isn't it a fact that at least half of the year he was not in Washington, but was down in Florida? A Well, most of the time he was here, since he come out of the service. He went down in Florida a few winters.

* * * *

241

Marshall McKibbin,

* * * *

Direct Examination

* * * *

Q Mr. McKibbin, will you state your full name for the record, please? A Marshall McKibbin.

Q Where do you live, Mr. McKibbin? A 600 Twentieth Street, Northwest.

Q What is your occupation? A Manager of the hotel.

Q And is that address you have just mentioned the Francis Scott Key Apartment-Hotel? A Yes, sir.

Q How long have you been manager of that hotel? A Twenty-three years.

242 Q Do you know the plaintiff in this action, Mr. Theo T. Taylor? A Yes, sir.

Q Had he been a resident at your apartment, hotel? A He has lived there at a couple of different times, about three years, between three and four years, I think. I can't give you the exact dates.

Q Directing your attention to May 25, 1949, was he a resident at your hotel at that time? A Yes, sir.

Q How long prior to May 25, 1949, had he been such a resident? A Well, he and his wife had been there some time before that, and then his wife was away. She was down in Florida at the time, but he had lived there continuously for, I suppose, a year.

Q For at least a year before May 25, 1949? A Yes, sir.

Q Directing your attention, Mr. McKibbin, to that particular date, did anything unusual concerning Mr. Taylor come to your attention on May 25? A Yes. His brother and, I think, a policeman brought him in there that morning, and called my attention to him, or I met them in the

lobby, and took him up to his room. We tried to put him in bed, and he was in bad shape.

243 Q Could you be mistaken about the fact that he was a policeman? Was it someone with a uniform cap? A It has been pretty near four years ago. I couldn't identify the policeman.

Q At any rate, you met them in the lobby and helped get him up to his room? A That is right.

Q Will you tell me something about Mr. Taylor's physical condition at that time when you first saw him that morning? A Yes, sir. He was all bloody, and his clothes were all bloody, and there was something wrong with his head. Apparently he had been hit over the head. I am not a doctor.

Q Did you notice any dressing or patch on his head at that time? A Yes, his head had been dressed.

Q Did you talk to him or attempt to talk to him at that time and engage him in conversation? A Yes, I attempted to talk to him, but I couldn't get any information out of him.

Q Did he make any response to your questions? A I think he did, but I can't tell you much about it. As I say, it has been a long time ago.

Q Was there any coherency in what he did
244 say? A Only that he had been in an accident. I got that out of him. His brother was with him.

Q On what floor was his apartment at that time? A I think it was 601. That is on the sixth floor.

Q And did you have to assist him up, or did he get up to his apartment himself? A We had to help him up.

* * * *

Q What did you do after your arrival in his apartment? A I think we put him down on the bed, as I remember, the first thing. And then I called a Dr. Hadley, who said he couldn't come for some time, an hour or some

time. And the man was in bad shape and was bleeding, and seemed to be in distress, and so we called Emergency Hospital.

Q Did you personally call Emergency Hospital? A Yes.

Q And as a result of your call, did the ambulance from Emergency respond? A Yes.

Q How was he taken from the apartment on the sixth floor down to the street? A On the elevator.

Q I mean, was he carried down, or on a stretch-
245 er, or how? A No. They brought a hospital
stretcher up for him.

Q He was taken by stretcher from his apartment out to the waiting ambulance? A Yes.

Q And did you accompany the ambulance to the Emergency Hospital? A No.

Q Did you later ascertain he was taken there? A Yes.

* * * *

Q Was there anything about Mr. Taylor's condition at the time you saw him that day to indicate that he was intoxicated?

THE COURT: I have ruled that out, and I don't want that question asked again of any other witness.

MR. DAVIS: Very well, Your Honor.

You may examine.

MR. GALIHER: No questions.

* * * *

246 *Norman D. Lockwood,*

* * * *

Direct Examination

* * * *

Q Will you state your full name, please? A Norman D. Lockwood.

Q Where do you live? A 2951 Nelson Place, Southeast.

Q What is your occupation? A I work for Mr. Taylor as a sightseeing driver.

Q How long have you been employed by Mr. Taylor?
A Approximately six years.

Q Were you so employed on May 25, 1949? A I was.

Q Directing your attention to the early morning of May 25, 1949, did you have occasion to see Mr. Taylor before you commenced your day's work? A I did.

Q Where did you see him first that morning? A At Rector's Restaurant, at Second and B Street, which is now Independence Avenue, Southeast.

Q Was he inside the restaurant? A He was inside the restaurant.

Q Will you tell us briefly his condition at that time when you first saw him?

* * * *

THE WITNESS: Well, when I first saw him in the restaurant, he was in the back booth, the very last booth in the back of the restaurant, with no coat on, his shirt, the top of his head and the top of his face very bloody, and with his head down on the table.

BY MR. DAVIS:

Q Did you have any conversation with him at that time? A I tried, sir, but I couldn't. I mean, he had all the appearances of a person that probably had just woken up or something. He didn't seem to be able to speak plainly at all. I couldn't get any sense or reason out of him at all.

Q Did he seem to know where he was at that time? A No, he did not.

Q Did you attempt to discuss any of the day's business with him? A I did.

Q And could you get any satisfaction from his responses? A None whatever.

Q What did you and his brother, George, do with respect to Mr. Taylor at that time? A Well, sir, after we found him, we finally got him on his feet and got him out of the restaurant. He was, incidentally, hardly able to walk.

THE COURT: When was that? What time of day was that?

THE WITNESS: I would say, Your Honor, it was approximately shortly after 6 o'clock in the morning.

BY MR. DAVIS:

Q Did you have to assist him out of the restaurant and into his car? A Oh, yes. We both helped him out into his car. We put him in the car, and took him then to the Francis Scott Key Hotel.

Q Was that his residence at that time? A
249 Yes, that is where he was living at that time.

* * * *

Q Mr. Lockwood, as a result of seeing Mr. Taylor that morning, in that condition, did you ascertain that any personal belongings of his had become lost? A Yes, yes; I did.

Q From whom did you learn that? A Mr. George Taylor.

* * * *

Q As a result of the information you received
250 concerning some lost property of Mr. Taylor, what, if anything, did you do? A Well, sir, I went to Providence Hospital.

Q And about what time of the morning was that? A I would say in the neighborhood of 7 o'clock. It may have been a little after. It may have been a little before. I don't know.

Q And on arriving at the hospital, what part of the hospital did you go to? A To the emergency room.

Q And did you talk to anyone there at that time? A I did, yes, sir.

Q Who was that? A A young lady at the desk in the emergency room.

Q And tell us what conversation you had with her. A On entering the emergency room, I saw this young lady at the desk, and I asked her if there was a patient there—not knowing at the time Mr. Taylor was not in the hospital—I asked her if there had been a patient there and been treated there for a head injury of any kind, and if there could have been a possibility of him having lost a wallet with, among other things, some paper and money in it.

And she, as I recall, looked through several papers or a book of some kind that she had on the desk before her, and said, "He isn't here. He is in police custody. He was drunk."

Q What did you do after that, Mr. Lockwood? A I went about my day's business and took care of the business that he had sold.

MR. DAVIS: You may examine.

MR. GALIHER: No questions, Your Honor.

* * * *

252 MR. DAVIS: If the Court please, I have in attendance Mr. and Mrs. John Melvin, who were two of the party of four with Mr. Taylor on the night preceding this occurrence. I have brought them on from St. Louis, Missouri, primarily to testify as to the amount of intoxicating liquors that Mr. Taylor had consumed that night.

THE COURT: I don't think that is in issue here.

MR. DAVIS: But in view of Your Honor's ruling, their testimony would be that while they were with him all that evening, he had only consumed three scotch and sodas and was not intoxicated.

THE COURT: But there is no contention on the part of the defendants that he was intoxicated.

You do not so contend?

MR. GALIHER: We do not.

MR. DAVIS: I wanted to tender that testimony, but I didn't want to run counter to Your Honor's ruling.

THE COURT: It is not in issue in this case, because the defendants do not contend he was intoxicated.

I think this is an unfortunate situation where the police made a mistake in arresting a man who was
253 suffering from something else, as an intoxicated person. The policeman explained that he did it for the plaintiff's own protection. But, be that as it may, I don't think that matter is in this case.

* * * *

Alma S. Cochran,

* * * *

Direct Examination

* * * *

Q Mrs. Cochran, would you state your full name, please, for the record? A Alma S. Cochran.

Q And where do you live, Mrs. Cochran. A 625 East Capitol Street.

Q And what is your occupation? A I have a tourist home.

Q And how long have you been engaged in that business? A Sixteen years last June.

Q Does your business occupy only the one address? A 625 and 627 East Capitol Street.

254 Q Do you know Mr. George Taylor, who lives at 628 East Capitol Street? A I do.

Q And do you know Mr. Theo Taylor, the plaintiff in this action? A I do.

Q How long have you known this Mr. Taylor? A Since I have been in the tourist business, 16 years last June.

Q Do you know what his business is?—Mr. Theo Taylor's? A I do.

Q What is it? A Sightseeing.

Q And in conjunction with his business, does he book tours from the tourists residing at your tourist home? A He does.

Q How long prior to May 25, 1949, had he been doing that? A Oh, for four or five years.

Q And during that period and in covering that process, what was your contact or association with Mr. Taylor? Close or— A Very close.

* * * *

255 Q Mrs. Cochran, was your contact with Mr. Taylor daily, prior to May 25, 1949? A Yes, several times each day.

Q And was his attitude toward business a brisk attitude? A Very, very much so.

Q Did information come to you concerning an injury sustained by him on May 25, 1949? A It was the
256 following morning, early, after his accident. I don't remember the date.

Q How soon did you next see him after you heard of his accident of May 25, 1949? A I would say approximately about a month, because I became ill myself just after his accident.

Q Have you noticed any difference in his business ability or his attending to business, after he returned to duty? A I certainly have.

Q Will you tell us what that difference is? A Well, he doesn't have the pep and zip. His memory is very bad. And a lot of times when he is grasping for words he has used just all the time, he can't seem to find them.

He oftentimes repeats something that he doesn't intend to repeat, in selling the tours, and things like that.

Q How recently have you noticed that condition? A Well, that never happened until after the accident.

Q But did you notice that just last week, or last month? A Oh, he is better, but he still does it, to some extent.

Q You have noticed visible manifestations of that just recently? A This summer, yes, sir.

* * * *

257 MR. GALIHER: No questions, Your Honor.

* * * *

THE COURT: I don't think, Mr. Davis, we should have any more witnesses on the plaintiff's condition. I think that is cumulative.

MR. DAVIS: Very well, Your Honor.

* * * *

Theo Thomas Taylor,

* * * *

Direct Examination

* * * *

Q Will you state your full name, please? A Theo Thomas Taylor.

* * * *

Where do you live at the present time, Mr. Taylor? A 510 Twenty-first Street, Northwest.

* * * *

258 Q Directing your attention to the Francis Scott Key Hotel, which is 600 Twentieth Street, were you living there on May 25, 1949? A Yes, sir.

Q And how long prior to that date had you lived there? A Two to three years. I don't recall just when I moved in there.

Q What is your occupation, Mr. Taylor? A Sight-seeing business.

Q And how long have you been in that business? A Since 1932.

Q And to be a sightseeing guide, are you required under District law to have an identification card or a character license? A Yes, sir.

Q I will show you this card and ask if this was
259 the license you held on May 25, 1949? A Yes, sir.

Q Where did you usually carry this when you were off duty? A I usually kept it either in my car or in my coat pocket.

Q Directing your attention to the evening of May 24th, 1949, what time did you get off duty that night? A Oh, between 8:15 and 8:30, I will say.

Q At that time, how many cars did you operate in your business? A Two.

Q And were they what are known as limousines? A That is right.

Q What capacity limousines were they? A Seven passenger.

Q Did you actually drive either one of the vehicles? A No, sir.

Q What was your connection with the business? A Well, I acted as the director of the tour and sold the tickets.

Q And from where did you solicit your business, or where did you obtain your business? A Down around the Capitol, the tourist homes, the Francis Scott Key Hotel.

260 Q And you would book the tours for your drivers to carry out? A That is correct, sir.

Q You say you got off duty that night about 8 o'clock, May 24th? A 8 or 8:15. I don't recall the exact time.

Q Did you meet anyone at that time? A Yes.

Q Who was that? A Jack Melvin.

Q And was anyone else with him? A We went out to his home.

Q That is, Mr. and Mrs. Jack Melvin? A That is right.

Q The two witnesses out here today? A That is right.

Q Where was he living at that time? A In the 1300 block of West Virginia Avenue, Northeast.

Q After going to his home, where did you go? A We went to the restaurant where he worked. It was known as the 5 o'clock Club, but it was a restaurant.

Q What time did you arrive there? A Oh, between 8:30 and 9 or 9:15, something in the neighborhood.

Q How long did you stay there? A Oh, a very
261 short time.

Q From there where did you go? A To the Casino Royal.

Q Where is that located?

THE COURT: I don't think we need testimony as to his movements prior to the accident. Suppose you get down to the accident.

MR. DAVIS: Your Honor has already ruled out the matter I was about to go in, as to his condition. That is what I wanted to lead up to.

THE COURT: You mean as to liquor?

MR. DAVIS: Yes, Your Honor.

THE COURT: That is not in the case. It is conceded that he was not intoxicated. Don't labor the point.

BY MR. DAVIS:

Q What time did you leave the Casino Royal, Mr. Taylor? A Oh, about quarter of 1, I imagine.

Q Quarter of 1? A Something in the neighborhood.

Q And from there where did you go? A To the Neptune Grill.

Q That is at Fifth and B Street, Southeast? A That is correct.

Q What was your purpose in stopping at the Neptune?

A Jack said he was hungry so we stopped to
262 get a bite to eat.

Q And did you have something to eat at that place? A Yes.

Q And did anything unusual occur while you were at the Neptune Grill? A Yes. I spoke to some boys over there, which I have known since I was here, and they were very young fellows since I have met them. I don't know them by name. I know them by face.

And Jack evidently thought someone was making a remark to me, or something, and an argument started. So I tried to act as a peacemaker there, and I took Jack to the men's room and told him to let us go wash our hands, and talked to him, and told him they were all friends of mine, and don't let us have any argument here.

* * * *

THE WITNESS: I said we went into the men's room, and I talked to Jack. I said, "Jack, don't let's have any argument here. I know everybody around here and I have an "Id" card to take care of."

BY MR. DAVIS:

Q By an "Id" card, you mean your identification card?
A That is right. So he said, "All right," and we started
back to the table. I waved at the boys and said
263 everything is all right. And Jack evidently misunderstood it again and thought they were probably making some other remarks, and an argument started.

And they went on the outside, before I could ever get to them. And I went and tried to get between them, and that is the last thing I remember.

Q In attempting to separate these two men you knew?
A That is right.

Q Something happened to you? A That is right.

Q Do you know what, if anything, did hit you? A No, I don't know what hit me, sir.

Q As a result of this accident, or this incident, were

you rendered unconscious? A I don't remember anything.

* * * *

Q Do you recall arriving at the Providence Hospital emergency room? A No, sir.

Q Do you have any recollection of what was done for you there? A No, sir.

Q Do you have any recollection of being taken
264 out of Providence and placed in a cell at No. 5 precinct? A No, sir.

Q Do you have any recollection of being released from No. 5 precinct by your brother and taken to your brother's garage? A No, sir.

Q Do you have any recollection of how you got out of the garage? A No, sir.

Q Do you have any recollection of any of the events of May 25— A No.

Q —up to the time you were admitted to Mount Alto Hospital? A No, sir.

* * * *

Q Do you recall your wife visiting you during that first week at Mount Alto Hospital? A No, I don't
265 remember the first week, sir.

Q Your mind was a complete blank as to the events that occurred at Mount Alto Hospital during the first week of your hospitalization? A Yes, sir.

Q After you were released from Mount Alto Hospital, Mr. Taylor, where did you go? A Back to 600 Twentieth Street, Northwest, the Francis Scott Key Hotel.

* * * *

Q And how long did you remain there before attempting to resume your work? A Well, first of all, my wife wouldn't let me out of her sight for about ten days.

* * * *

266 THE COURT: How soon did you go back to work?

THE WITNESS: I don't exactly remember what day I did go back to work. But I couldn't work until my "Id" card was reestablished, which I didn't get back.

BY MR. DAVIS:

Q In other words, your identification card was being held up? A That is right.

Q Can you fix the time that you did ultimately resume your work? A Well, I booked tours about July 15, from the tourist homes. But I made practically no contact on the outside, except the hotels and tourist homes.

Q What was the status of your two cars and your two drivers during the approximately one month you were at the Mount Alto Hospital? A They were stored.

Q They were what? A They were stored.

Q And did they remain stored until you got your "Id" card back and could fully supervise the business? A One of them was, yes, sir.

Q Mr. Taylor, your sightseeing business is more or less of a seasonable business, is it not? A That is correct, sir.

267 Q What part of the year does that cover? A Well, the best part of the season starts in April.

Q And for how long does it last, from April on? A Until September the 15th.

Q The middle of September? A Yes, sir.

Q And at that time, in 1949, prior to May 25, 1949, what were your average net weekly earnings?

* * * *

A Oh, around a thousand dollars a month.

Q And that period covers a five-month season? A That is correct, sir.

Q Mr. Taylor, has there been any difference in your ability to book tours or your ability to make sales contacts since this injury of May 25, 1949? A Quite a difference.

Q Will you state briefly to the jury what that difference is, how you have been affected? A First, I used to

sell people the other sightseeing man couldn't sell. That day is over.

Q What do you do during the winter months, Mr. Taylor? A Well, I did have a pool room in Florida.

* * * *

268 THE COURT: You do what?

MR. DAVIS: He operates a pool room, Your Honor.

THE COURT: What kind of a pool room?

THE WITNESS: I have an open pool room down there, sir, for men and women.

THE COURT: I understand. But what do you mean by a pool room, because that term has more than one meaning.

THE WITNESS: I don't know what you mean, other than a pool room, sir.

BY MR. DAVIS:

Q It isn't a swimming pool, is it? A No—a pool room.

Q It is a billiard room? A That is right.

Q What is known as pocket billiards? A That is correct.

Q The colloquial name is pool? A That is correct.

Q When did you obtain that business, Mr. Taylor? A In 1945.

Q Was that immediately after your discharge from the service? A Correct, sir.

* * * *

270 Q I understand you operated that, then, only during the winter months. Is that correct? A Up until 1947, when I came back here.

* * * *

Q When did you dispose of or sell the pool room business, Mr. Taylor? A I sold it in 1950, and had to
271 take it back, sir, on non-payment.

Q In other words, at the time of this accident,

on May 25, 1949, you still had the pool room business, which you operated as a winter time venture. Is that correct? A Correct, sir.

Q After this incident of May 25, 1949, were you able to handle the active management of your pool room business during the winter months, particularly the winter of 1949-1950? A The only thing I could do was to take the receipts home to my wife. I didn't run it. I would look over the pool room and see if it was in good condition.

Q You ultimately sold it some time in 1950? A That is right.

Q And I understand you to say you have since had to take it back? A That is correct, sir.

Q Whose care were you under after leaving the Mount Alto Hospital, following June 22nd, 1949? A Dr. Nealon.

Q Were you subsequently examined by Dr. John D. Gallagher, a neurologist, at the recommendation of Dr. Nealon? A I certainly was.

Q Were you examined shortly thereafter by a Dr. Hugh O. Fulcher, on behalf of the defendants? A
272 Some doctor. I can't remember his name.

Q Have you been under the care of any other doctors than Dr. Nealon and Dr. Gallagher, and Dr. Winfield at Mount Alto Hospital? A I went back to see Dr. Winfield. * * *

* * *

Q What was your total loss of earnings, Mr. Taylor, covering the two months following May 25, 1949? A I would say in the neighborhood of twenty-two to twenty-three hundred dollars.

MR. DAVIS: I think that is all. You may examine.

MR. GALIHER: We have no questions at this time, Your Honor.

* * *

MR. DAVIS: Your Honor said the further testimony on this would be cumulative; so I won't call Mrs. Taylor.

THE COURT: Very well.

MR. DAVIS: That is the plaintiff's case, if the Court please.

* * * *

273 MR. GALIHER: At this time, on behalf of both defendants, I move that the Court instruct the jury to return a verdict in favor of the defendants, because the plaintiff has failed to establish a prima facie case.

THE COURT: I will hear you, Mr. Davis.

(Counsel having been heard on defendants' motion for directed verdict, and having returned to the trial table:)

DIRECTION OF VERDICT IN FAVOR OF DEFENDANTS

THE COURT: In this case the Court has eliminated the question as to whether the arrest was lawful or unlawful and whether the plaintiff suffered any damages as a result of the arrest, because the evidence clearly shows that neither the Providence Hospital nor Dr. Salazar was responsible for the arrest. The arrest was made by the police, on their own initiative.

Now as to the other matters in the case. In the pre-trial memorandum, the plaintiff claimed two acts of negligence on the part of the hospital and the physician: First, the failure of the hospital to admit Taylor as a patient for observation and to X-ray him at that time; second, an alleged erroneous diagnosis of intoxication, as plaintiff's condition.

274 The evidence shows, both through the oral testimony of the Doctor and the records of the hospital, that there was no diagnosis of intoxication. So the second alleged act of negligence falls by the wayside. There is

left a question of failure of the hospital to admit Taylor as a patient for observation and to X-ray him.

There is no expert medical testimony to the effect that it was bad medical practice not to admit the plaintiff to the hospital. In other words, it may have been an error of judgment; but professional men are not liable for damages for errors of judgment, unless the error of judgment involves negligence, or failure to comply with the ordinary practice in the community in like cases.

The Doctor testified that there were no available beds, and his testimony was not contradicted. This testimony was elicited by the plaintiff as part of the plaintiff's case, and therefore must be considered in connection with the defendant's motion.

Second, even if there is a culpable failure to admit the plaintiff to the hospital, there is no evidence tending to show that he sustained any damages as a result thereof. There is no testimony here that the plaintiff's condition was aggravated or made worse, or that his recovery was prolonged merely as a matter of failure of Providence Hospital to admit him, and because he was
275 not admitted to a hospital until the following day.

It seems to me that the case of *Kasmer v. Sternal*, 83 Appeals D. C. 50, is determinative of this question. The case on which the plaintiff's counsel relies, *Central Dispensary and Emergency Hospital v. Harbaugh*, 84 Appeals D.C. 371, is not in point. On the contrary, it holds that there must be proof that the alleged negligence was the proximate cause of the injuries. There is no such proof here.

While some unfortunate things happened in this case, I see no cause of action and I reach the conclusion that there is no substantial evidence which would justify the jury in rendering a verdict in favor of the plaintiff. Accordingly a motion for directed verdict is granted.

No. 11,759

BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

THEO. T. TAYLOR, *Appellant*,

v.

PROVIDENCE HOSPITAL, A Body Corporate, and
DR. ANGEL E. SALAZAR, *Appellees*.

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
For the
District of Columbia Circuit

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No. 11,759

QUESTION PRESENTED

Whether the court in a malpractice case properly ruled at the conclusion of the plaintiff's case that plaintiff had failed to make a prima facie showing of negligence or of damage.

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Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEES

COUNTER STATEMENT OF THE CASE

Appellee Salazar noticed the odor of alcohol on Appellant's breath. Appellant showed improvement after he had been in the hospital room one and a half hours. He was checked for intercranial injury or damage. The hospital had two or three men like him every night. (20-21A).

During the two hour period appellant was in the hospital, he did not show any immediate danger and therefore had to be discharged. (22A). An effort was made

to check the addresses he gave but the addresses were old ones and it was impossible to ascertain where he was living. Dr. Salazar testified the Providence Hospital did not own an X-ray machine, that he had nothing to do with X-ray and had never used an X-ray machine at the hospital; that no personnel was available at the time to take X-rays, that he did not consider it an emergency and an X-ray would not have solved any question one way or the other; that he felt Appellant's scalp for a depression of the bones but that a linear fracture could not be determined by manipulation; that the X-ray department which was operated by Drs. Kaylin and Lybeth was closed at the time Appellant was brought in and was treated. Appellant Salazar further testified that the persons with Appellant wanted him admitted to the hospital because they did not desire to take care of him themselves but wanted to go home and sleep; but that when Appellant left he was walking and was under full power saying he felt much better. (24-26A). That while Appellant was in the hospital his blood pressure was taken and was found to be within normal limits; that he was not in shock but had a mild concussion; that at the time he left there was no emergency; that what Appellee Salazar did here was what he did every day; that Appellant's address could not be located but the police were going to take care of him; that he made an effort to get a bed for Appellant but there were none available; that he never accused Appellant of being drunk and never diagnosed his condition as one of acute alcoholism; (35A).

Dr. Stephen Nealon testified that he first saw Appellant September 28, 1949; that Appellant complained primarily of fatigue, dizziness and weakness; that Appellant gave him a past history of migraine headaches all of his life which recurred every six weeks; that he made a diagnosis of a probable post concussion syndrome which indicated a certain group of symptoms which might result from a

certain illness; that he found no objective evidence of disease and found only a healed scar on his head; that he ascertained from the Mt. Alto records that Appellant had had a linear fracture of the skull; that he prescribed no specific treatment except rest; that on October 21, 1949, he again saw Appellant and found nothing specific; that he saw Appellant several times thereafter and treated him in June of 1950, for pneumonia; that at this time he found no neurological symptoms; that if it had been known Appellant had a fracture of the skull it would have been good medical practice to have admitted him to the hospital; that if it was not known that Appellant had a fractured skull he could not see how it would be bad practice to have him leave the emergency room; that the majority of people treated in emergency rooms are not admitted to hospitals when no obvious thing is found wrong with them; that the Mt. Alto record indicated that the neurological examination was basically negative and no pathological reflexes were noted; that it is not bad practice to fail to admit to a hospital a person with a laceration and concussion because no specific treatment is necessary but rest and observation. (106A).

The report of Mt. Alto Hospital showed that Appellant had a linear fracture of the skull upon his admission on May 25, 1949, that he was hospitalized for observation for one month; that he thereafter returned as an out patient for sometime. (106A).

Dr. John P. Gallagher testified that he found Appellant suffering from a post concussion syndrome; that the symptoms he found in Appellant were not the result of a skull fracture but due to a brain concussion. (110A); that the only definite way to detect a linear fracture of the skull was by direct inspection or palpation.

Officer John Carroll testified that he was in the emergency room of the hospital for a rather long time (55A); that he could not get anything out of Appellant who had

alcohol on his breath; that there was no relative at the hospital to take care of him, and his address could not be ascertained (57-58A); that Appellant was released to the police and taken to No. 5 precinct (57A).

Witness Clark carried him from the place of the altercation to Appellant's car and from there to the hospital. No one at all was with Appellant at the time he was carried from the scene. Clark was asked by the nurse at the hospital the name of Appellant but was only able to give the name of Teddy and did not know where he lived. An orderly, nurse and the Appellee, Salazar, worked on Appellant (82-82A). When Appellant first came in he was incoherent but thereafter following treatment the witness had no difficulty understanding him and Appellant sat on a bench in an outside room. (85A).

Appellant was first taken to Emergency Hospital and thereafter to Mt. Alto Hospital. (89-90A).

SUMMARY OF ARGUMENT

In this malpractice case there was a complete failure on the part of Appellant to establish any evidence of either negligence or damage. There was no showing that Appellees were negligent in failing to x-ray or to admit Appellant to their hospital for observation; there was no evidence that Appellee, Salazar, made an erroneous diagnosis of intoxication and no damage was shown to have resulted to appellant from appellees treatment.

ARGUMENT

Since Appellees were not responsible for Appellant's fractured skull which came in a street altercation the only questions involved are:

1. Whether or not Appellees' treatment deviated from approved medical standards and,
2. If there was a deviation, whether it aggravated Appellant's condition and caused him damage.

The only negligence claimed by Appellant is the Appellees' failure to admit Appellant as a patient for observation and to x-ray him plus an alleged erroneous diagnosis of intoxication. As the court pointed out in its opinion (140A) and as Appellee, Salazar, testified there was never a diagnosis of intoxication. (35A).

A careful search of the record discloses no word of testimony from any witness upon which a jury could base a conclusion that the claimed failure of Appellees to admit Appellant or to x-ray him in any way aggravated his injuries received in the street fight. There is a total lack of evidence upon which to base a conclusion that anything Appellees did or failed to do produced an unfavorable result or caused damage to Appellant. On the contrary the record substantiates the fact that Appellant made a routine recovery from the injuries which he had received without untoward results of any kind.

Appellant relies principally on *Central Dispensary and Emergency Hospital v. Harbaugh*, 84 U. S. App. D.C. 371, 174 F (2d) 507. Factually the cases are different because in the former case there was an erroneous diagnosis of intoxication, while that was not present here. Additionally in the *Harbaugh* case, supra there was testimony of a physician that conduct on the part of the hospital had caused aggravation of the plaintiff's condition which testimony is completely absent and lacking here.

Appellant asserts that there is some doubt concerning Appellees' position that there was no bed available in the hospital. There can be no argument about this because the uncontradicted testimony on page 32A of the appendix established this to be a fact. While it is true as Appellant points out that a cot could have been furnished Appellant in the emergency room for a temporary period, his condition had improved to an extent where his blood pressure was normal, he was able to leave under his own power and he stated that he felt much better.

Appellees' can well appreciate Appellant's feelings at being charged with intoxication by the police but they were in no way responsible for this and made every effort to locate Appellant's address and relatives, and to restore him to the bosom of his family. When it appeared that no one would take responsibility for him, that he had no place to go, that he could not be identified, that there were no beds in the hospital, then and only then was he released to the police officers. (32A).

Furthermore Appellees' must concede in the light of the unfortunate developments that it probably might have been better to admit Appellant to the hospital, no doubt it would have prevented this law suit. However, it was late at night, Appellant was brought in off of the street into the hospital emergency room which was provided for members of the public which might meet with injury at a time when other medical services were not readily available, and under the existing conditions he received the best of care available. Appellee Salazar, used all of the facilities available to him and exercised his best judgment in the light of the circumstances then and there existing. The unfortunate fact that Appellant was later found to have a fractured skull does not make out a case here, unless Appellees were negligent and then only if said negligence caused injury or damage to Appellant. Nowhere in Appellant's brief does he point out any damage to himself as a result of Appellees' alleged improper and negligent treatment.

There was no showing in the record here that if x-rays had been taken by Appellees, that any different course of treatment would have been taken by Appellees than was given and followed out by Mt. Alto Hospital where he was admitted the same day of the injury (90A). Nor was there any showing that Appellant's condition would have been different or his convalescence more rapid if

he had been admitted to the Providence Hospital or had been X-rayed before he was.

Appellant has cited the case of *Kuhn v. Banker*, 133 Ohio St. 304, 13 N.E. (2d) 242, 115 A. L. R. 292. In this case the Appellate Court found that there was negligence in failing to take an X-ray but that where there was no evidence adduced which would give rise to a reasonable inference that the defendant's act of malpractice was the direct and proximate cause of the injury to the plaintiff that judgment should be for the defendant asserting:

“* * * the patient cannot recover damages unless the act of malpractice is the direct and proximate cause of injury.”

In ascertaining whether or not the record discloses a violation on the part of the hospital of its duty to give such reasonable care and attention as the patient's known condition requires, the standard laid down in *Garfield Memorial Hospital v. Marshall*, — U.S., App. D.C. —, No. 10,984, decided April 30, 1953, the testimony of Dr. Nealon is most important and significant for it seems to present the picture here in its proper light. Appellant's counsel propounded an hypothetical question to him which set out the factual picture and which sought an answer to the question:

“Would it have been bad medical practice not to have admitted such an individual for further observation and study and to rule out any diagnosis of fracture until an X-ray could be made?” (101A)

Dr. Nealon's reply puts this case in its proper focus for he stated:

“Well, the only way I can answer that question is in this manner, that if it had been known that the man had a fracture of the skull, of course it would be good medical practice to have him admitted to the hospital.

Of course, if it was not known that the skull was fractured, I can't see how it would be bad practice to have him leave the emergency room. As all of us know who have worked in emergency rooms, the number of people you see, in the course of a day, a week or a month, with various types of injury, it would be good, it would be excellent practice, if he could be admitted. But we just don't admit the majority of them when we don't find any obvious thing wrong with them.

To try and be more specific, I reviewed the Mount Alto record and I see, even on the time of his admission to Mount Alto, that aside from his stuporous state, that his neurological examination was basically negative, you see.

In other words, the report specifically states that the deep reflexes were hyper active and there were no sensory changes noted; a negative Babinski sign, and no pathological reflexes noted.

That was, of course, the day of his admission to the Mount Alto Hospital, and there was nothing specific on the neurological examination. So you couldn't answer the question—

THE COURT: I think you have answered it.”
(103A)

The medical testimony of all of the physicians and the entire record in this case discloses ample reason for the failure of the hospital to admit Appellant or to X-ray him and further that its treatment was in accord with that customarily exercised by hospitals generally in this community.

As the lower court judge pointed out there was no diagnosis of intoxication, there was no evidence to show it was bad medical practice not to have admitted Appellant to the hospital and there was a complete lack of evidence showing he sustained any damages as a result thereof.

While it is true that expert testimony is not needed to show evidence of negligence in a malpractice action, a claimant is still required to make out a prima facie case and to furnish evidence of damage, neither of which

requirements Appellant was able to fulfill here. Appellant's position seems to be that because the Appellee Salazar did not discover that his skull was fractured while he was in the emergency room of the hospital that this and nothing more will require both Appellees to respond in damages. This is not sufficient in law, Appellant's proof of negligence and damage was entirely lacking and the lower court properly directed a verdict. *Kasmer v. Sternal*, 83 N.S. App. D.C. 30, 165 F (2d) 624.

CONCLUSION

The lower court properly directed a verdict for the Appellees because there was a complete failure on Appellant's part to make out a case against Appellees. Therefore the decision of the lower court should be affirmed.

Respectfully submitted

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